1949.

SUPREME COURT OF THE UNITED STATES.

No. 179.

THE STEAMBOAT NIAGARA, HER TACKLE, &c., THE EAST RIVER STEAMBOAT ASSOCIATION, CLAIMANTS AND APPELLANTS,

vs.

JOHN VANPELT, MASTER OF THE STEAMBOAT CLEOPATRA, AND THE NORWICH AND WORCESTER RAILROAD COMPANY, OWNERS, &c.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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UNITED STATES OF AMERICA,
Southern District of New York, ss.

I, John W. Nelson, Clerk of the Circuit Court of the United States of America for the Southern District of New York, [L. S.] in the Second Circuit, do hereby certify that the writings annexed to this certificate are true copies of their respective originals on file and remaining of record in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the Southern District of New York, in the Second Circuit, this twelfth day of November, in the year of our Lord one thousand eight hundred and fifty-three, and of the Independence of the said United States the seventy-eighth.

JOHN W. NELSON,
Clerk.

UNITED STATES OF AMERICA,
Southern District of New York, ss.

I, George W. Morton, Clerk of the District Court of the United States of America for the Southern District of New York, [SEAL.] in the Second Circuit, do hereby certify that the writings annexed to this certificate are true copies of their respective originals on file and remaining of record in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the Southern District of New York, in the Second Circuit, this second day of March, in the year of our Lord one thousand eight hundred and fifty-three, and of the Independence of the said United States the seventy-seventh.

GEO. W. MORTON,
Clerk.

At a stated term of the District Court of the United States of America for the Southern District of New York, held at the City Hall in the city of New York, on Tuesday, the fourth day of January, in the year of our Lord one thousand eight hundred and fifty-three—Present, the Honorable Samuel R. Betts, District Judge.

JOHN VAN PELT
vs.
The Steamboat NIAGARA, her tackle, &c.

1848, March 27th, the libellant files his libel in *the* words and figures following, to wit:—

To the Honorable Samuel R. Betts,
Judge of Dist. Court of U. S. for Southern Dist. of New York:

The libel and complaint of John Van Pelt, master of the steamboat Cleopatra, for and on account and in the name of the Norwich and Worcester Railroad Company, a corporation chartered and created by the laws of the State of Connecticut and Massachusetts, and doing business in said States, and owners of the said steamboat Cleopatra, her tackle, apparel, &c. against the steamboat Niagara, (whereof John Brooks, Jr. now is or late was master), her tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein, in a cause of collision, civil and maritime. And thereupon, the said John Van Pelt alleges and articulately propounds as follows:—

First. That on the 30th day of December last, 1847, the said steamboat Cleopatra, whereof said John Van Pelt now is and then was master, was a tight, stanch, well-built vessel, of the burthen of 100 tons or thereabouts, and was then well found, completely rigged, and sufficiently provided with tackle, apparel, &c., and was engaged in the business of carrying passengers and freight between the ports of New York, and Norwich in the State of Connecticut, in connection with the railroad belonging to said Norwich and Worcester Railroad Company, and with said railroad and other steamboats formed the line of conveyance between the cities of New York and Boston, known as the Norwich and Worcester Railroad line; and that on the morning of the said 30th day of December, at about a quarter before 7 o'clock, the said steamboat Cleopatra was returning on her trip or passage from said Norwich to her berth at Pier No. 1, North River, in the harbor of New York, with a large number of passengers and a large amount of freight or goods, besides a full complement of hands or crew to navigate her on the trip or passage above mentioned.

Second. That the said Steamboat Niagara was at said time, on said 30th day of December last, engaged in transporting passengers and freight to Bridgeport, in the State of Connecticut, in connection with the Housatonic Railroad; and on the said morning of the 30th day of December left her berth or moorings at the pier at the foot of Market street, East River, bound to said Bridgeport; that her course lay up the East River and through Long Island Sound; that when about abreast the foot of Grand Street in said East River and in the harbor of New York, within the ebb and flow of the tide, and within the admiralty and maritime jurisdiction of this honorable court, at about fifteen minutes before seven o'clock in the morning and in broad daylight, met said steamboat Cleopatra on her said return trip from Norwich, and although there was an abundance of room at said place on the outside, which was to the right or starboard side (and where it was the Niagara's duty to have gone), to have passed free and clear of her; yet the captain and crew of the said Niagara attempted to cross the bows of the Cleopatra,

to take the inside of her, in doing which they ran her, the said steamboat Niagara, with great force and violence foul of and on board of said steamboat Cleopatra, and struck her just forward of her larboard wheel-house, and thereby broke and carried away her larboard wheel, broke her large iron crank, carried away a large portion of her bulwarks, railing, and stanchions, and otherwise greatly damaged said steamboat Cleopatra and her machinery, so much so that she had to be towed to the foundry for repairs, as her engine by said collision was stopped and rendered useless.

Third. That at the time the damage mentioned in the next preceding article happened, it was impossible for the said steamboat Cleopatra to avoid it, as she was going on her regular course and close in shore, keeping to the right of all other boats, and was about rounding the point of Powle's Hook at the foot of Grand Street, and at the moment of said collision the pilot and assistant pilot of said Cleopatra were in her pilot-house steering said boat and on the look-out, and supposed the said Niagara would keep out in the stream and pass to the right, which it was her duty to do, as at the place where the said collision took place the river is very wide, affording an abundance of room to pass without doing any damage whatever; and had not said John Brooks, Jr. and the others having charge of the said Niagara, attempted to cross the bows of said Cleopatra and neglected to endeavor to keep clear of her, which they ought to have done, and which they might have done, with ease and safety, the aforesaid damage would not have happened.

Fourth. That the said steamboat Cleopatra, before and at the time of receiving the damage from said steamboat Niagara, as heretofore mentioned, was a tight, stanch vessel; that the said Norwich and Worcester Railroad Company then were and now are the true and lawful owners of the same, and of her tackle, apparel, and furniture.

Fifth. That the said damages mentioned in the second article of this libel were repaired by the shipwrights, machinists, and others, with all possible dispatch, at a cost of seventeen hundred dollars and upwards, and that by reason of said steamboat Cleopatra having been run foul of as aforesaid, the said Norwich and Worcester Railroad Company, the libellants, have sustained damages for the services, and repairs, and expenses, aforesaid, and loss of time and use of said steamboat Cleopatra, and in wages paid to her crew while said repairs were being made, and loss of freight and passage-money which she otherwise would have earned, to the amount of three thousand dollars.

Sixth. That all and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court; in verification whereof, if denied, the libellant craves leave to refer to the depositions and other proofs to be by him exhibited in this cause.

Wherefore, the libellant prays that process in due form of law,

according to the course of the Courts of Admiralty and of this Honorable Court in causes of Admiralty and Maritime Jurisdiction, may issue against the said steamboat Niagara, her tackle, apparel and furniture, and that all persons having or pretending to have any right, title, or interest therein, may be cited to appear and answer upon oath all the matters so articulately propounded, and that this Honorable Court would be pleased to pronounce for the damages aforesaid, and to decree such other relief to the libellants as shall to law and justice appertain, and also to condemn the said steamboat Niagara, her tackle, apparel, &c., and all persons intervening for their interest therein in costs.

JOHN VAN PELT.

OSCAR W. STURTEVANT,
Proctor for Libellant.

LUTHER R. MARSH,
Advocate.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Be it remembered, that on this 28th day of March, 1848, before me at the City Hall, in the City of New York, personally appeared the within named libellant, and made solemn oath that he had heard read the foregong libel by him subscribed, and knows the contents thereof, and the same are true of his own knowledge, except as to matters and things therein stated to be on his information and belief, and as to those matters and things he believes it to be true.

GEO. W. MORTON,
U. S. Com.

And files his stipulation for costs.

Consent to bond, and waive process of attachment, March 29, 1848.

U. S. DISTRICT COURT.

JOHN VAN PELT
vs.
The Steamboat NIAGARA, her tackle, &c.

I hereby consent to waive the issuing of process of attachment against the steamboat Niagara, her tackle, &c., provided the claimants execute stipulations for costs, and value the latter in the sum of four thousand dollars, the stipulators to justify before the commissioner, and the claimant paying into court the costs of the Clerk and Commissioner to the time of stipulating; the claimant further consenting to appear and answer the libel on file, on or before the 16th day of April next, and failing so to do, the defaults to be entered and a reference had to the commissioner to ascertain

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and report the damages sustained by the libellant, and a final decree to be entered on the coming in of the commissioner's report. The stipulations to represent the vessel.

OSCAR W. STURTEVANT,
Pr. for Lib't.

Dated *March* 29, 1848.

I consent that an order be entered pursuant to the terms of the above consent.

Pr. for Claimant.

DISTRICT COURT OF THE UNITED STATES
for the Southern District of New York.

Filed the 27th day of March, 1848.

Stipulation for Libellant's Costs.

Entered into pursuant to the rules and practice of this court.

Whereas, a libel was filed in this court, on the twenty-seventh day of March, in the year of our Lord one thousand eight hundred and forty-eight, by John Van Pelt, libellant, against the said steamboat Niagara, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying that said steamboat, her tackle, &c., may be condemned and sold, to pay the demands of the libellant, and the parties hereto, hereby consenting and agreeing, that in case of default or contumacy on the part of the libellant or his surety, execution may issue against their goods, chattels, and lands, for the sum of two hundred and fifty dollars—

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is bound in the sum of two hundred and fifty dollars, conditioned that the libellant above named shall appear and answer to the cause, and to interrogatories, and shall pay all such costs as shall be awarded against him by this court, or in case of appeal, by the Appellate Court.

JOHN VAN PELT,
J. H. VANDERBILT,
OSCAR W. STURTEVANT.

Taken and acknowledged this 28th day of March, 1848, before me,

GEO. W. MORTON,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, ss:

Jacob H. Vanderbilt and Oscar W. Sturtevant, parties to the above stipulation, being duly sworn, deposes and *say*, that he is worth

the sum of five hundred dollars, over and above all his just debts and liabilities.

J. H. VANDERBILT,
OSCAR W. STURTEVANT.

Sworn to this 28th day of March, 1848, before me,

GEO. W. MORTON,
U. S. Commissioner.

DISTRICT COURT OF THE UNITED STATES
for the Southern District of New York.

In Admiralty. Filed the 29th day of March, 1848.

Stipulation entered into pursuant to the rules and practice of this Court.

Whereas, a libel was filed on the twenty-seventh day of March, in the year of our Lord one thousand eight hundred and forty-eight, by John Van Pelt, libellant, against the steamboat Niagara, her tackle, &c., for the reasons and causes in the said libel mentioned; and whereas, the parties in interest having agreed to execute stipulations for costs and value, the latter in the sum of $4000, in lieu of the vessel being in the custody of the Marshal, under the process to be issued in pursuance of the prayer of said libel, and further consenting to appear and answer the libel on file, on or before the sixteenth day of May next, and failing so to do, their defaults to be entered, as appears from said consent now on file in said court; and the parties hereto hereby consenting and agreeing, that in case of default or contumacy on the part of the claimants, or their sureties, execution for the above amount may issue against their goods, chattels, and lands—

Now therefore, the condition of this stipulation is such, that if the stipulator undersigned shall at any time, upon the interlocutory or final order or decree of the said District Court, or of any Appellate Court to which the above-named suit may proceed, and upon notice of such order or decree to Alexander Hamilton, Jr., Esq., Proctor for the claimants of said steamboat, abide by and pay the money awarded by the final decree rendered by the court, or the Appellate Court, if any appeal intervene, then this stipulation to be void, otherwise to remain in full force and virtue.

ROBERT SCHUYLER,
DN. F. ROCKWELL.

Taken and acknowledged this 29th day of March, 1848, before me,

GEO. W. MORTON,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, ss:

Robert Schuyler and D. F. Rockwell, parties to the above stipulation, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of five dollars, over and above all his just debts and liabilities.

ROBERT SCHUYLER,
DN. F. ROCKWELL.

Sworn to this 29th day of March, 1848, before me,

GEO. W. MORTON,
U. S. Commissioner.

Respondent's Costs.

DISTRICT COURT OF THE UNITED STATES
for the Southern District of New York.

Filed the 29th day of March, 1848.

Stipulation entered into pursuant to the rules and practice of this Court.

Whereas, a libel was filed in this court, on the twenty-eighth day of March, in the year of our Lord one thousand eight hundred and forty-eight, by John Van Pelt, libellant, against the steamboat Niagara, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying that said steamboat, her tackle, &c., might be condemned and sold to pay the damages sustained by the libellant, as set forth in the libel, and the parties hereto hereby consenting, that in case of default or contumacy on the part of the claimants or their *sureties*, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands—

And whereas, also, a claim and answer is about to be filed in said cause by George Schuyler—Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and are hereby bound in the sum of two hundred and fifty dollars, conditioned that the claimants above named shall pay all costs and expenses which shall be awarded against them, by the final decree of this Court, or upon an appeal by the Appellate Court.

ROBERT SCHUYLER,
D. F. ROCKWELL.

Taken and acknowledged, this 29th day of March, 1848, before me,

GEO. W. MORTON,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, ss:

Robert Schuyler and D. F. Rockwell, parties to the above stipulation, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

ROBERT SCHUYLER,
D. F. ROCKWELL.

Sworn to this 29th day of March, 1848, before me,

GEO. W. MORTON,
U. S. Commissioner.

April 29, 1848. The claimant files his claim and answer in the words and figures following:—

UNITED STATES OF AMERICA,
Southern District of New York:

To the Honorable Samuel R. Betts, Judge of the District Court of the United States within and for the Southern District of New York.

And now John Brooks, Jr., for and on account of himself and his associates, forming the East River Steamboat Association, an association duly created and existing under the laws of the State of Connecticut, and doing business therein, the sole and *bona fide* owners of the steamboat Niagara, her tackle, apparel, and furniture, appear before this honorable court, and for answer to the libel and complaint of John Van Pelt, for and on account and in the name of the Norwich and Worcester Railroad Company, against the said steamboat Niagara, her steam-engine, boilers, machinery, tackle, apparel, and the other furniture, answers, alleges, and propounds on behalf of the said steamboat Niagara, her steam-engine, boilers, machinery, apparel, and furniture, as follows:—

First. To the first article, this claimant answering, says: "That he is ignorant, except from said article, as to the condition of said steamboat Cleopatra, on the 30th day of December, 1847, her burthen and equipment, and of the use and employment of the said steamboat by the Norwich and Worcester Railroad Company, as well as of the particular trip or passage in which she was then engaged from Norwich, in the State of Connecticut, with passengers and freight as therein mentioned, and they deny that she was tight, stanch, well built and found, and completely equipped with a full complement of officers and crew, and they deny the other circumstances stated in said article, and call upon the libellants to make proof thereof.

Second. To the second article, this claimant and respondent answering admits that the said steamboat Niagara was on the 30th day of December last engaged in transporting passengers and

freight to Bridgeport, in the State of Connecticut, in connection with the Housatonic Railroad, and that on the said morning of the 30th day of December, the said steamboat Niagara left her berth at the pier foot of Market Street, East River, bound to said Bridgeport, and that her course lay *up* the East River, and through Long Island Sound, and that she met the said steamboat Cleopatra about a quarter before seven o'clock in the morning, coming down the East River, from Long Island Sound to the City of New York, and in an opposite direction to that in which the Niagara was moving; but this claimant denies that at the time and place of meeting, as aforesaid, it was the duty of the Niagara to pass on the outside (called in said article the right or starboard side), as therein alleged, and he denies that the captain and crew of the said Niagara attempted to cross the bows of the said Cleopatra, and take the inside of her, as therein stated, and that in so doing or in any other way or manner, they ran the said steamboat, the Niagara, with great force and violence, foul of said steamboat Cleopatra; but he admits that the said Niagara came in collision with the said Cleopatra with considerable force and violence (but he avers that it was the fault, want of care, and skill of those persons navigating the said Cleopatra, as hereinafter stated), whereby the said Niagara received a slight injury, but what amount of damages was caused thereby to said Cleopatra, this claimant is ignorant, except as stated in said article; but he denies that said damages (if any) were caused by the want of care, skill, or good management of those in charge of or navigating said steamboat Niagara.

Third. To the third article of , this claimant answering denies that it was impossible for the said steamboat Cleopatra to avoid said collision, and he denies also that she was keeping close in shore, and that it was her regular course so to do, and he denies also that she was keeping to the right of all other boats (if by the right is meant the inside or that side nearest to New York), and this claimant avers on the contrary that it was the regular course of a steamboat under the circumstances in which the Cleopatra was placed, and going in the direction she then did, to have kept off from the New York shore or side into the true tide—at that time running ebb—and thereby avoid the eddy; that the Cleopatra, previous to the said collision, was not as close into the New York shore as the said Niagara, but was brought nearer to it than she was before shortly previous to the time of the collision, by an improper, unseamanlike, and unskilful change in her course, tending to bring her directly across the bows and course of the Niagara, and that so far from keeping to the right of all other boats, as stated in said article, the said Cleopatra had passed on the outside of the steamboat Traveller, going in the same direction with the said Niagara, and a short distance ahead of her, leaving the said Traveller on the inside of her, the said steamboat Cleopatra, and between the said Cleopatra and the New York shore. And this claimant admits

that at the place where the collision occurred the river is wide and affords an abundance of room to pass without injury, and he avers that if the said Cleopatra had been conducted and navigated in a skilful, usual, and proper manner under the circumstances, the said collision between the said steamboats and the damages therefrom would not have occurred.

Fifth. To the fifth article this claimant answering, says, that he is ignorant, except from said article, *as* to the damages and expenses sustained by said Cleopatra, as therein stated and alleged; and therefore calls upon the libellants to make out the allegations in these respects by proof; and he denies that said damages, if any, were occasioned by the fault, negligence, or want of proper care and management, of the persons navigating the said steamboat Niagara; but on the contrary, he avers that the said collision would not have occurred, but for the bad management, improper navigation, and want of skill, care, and attention, on the part of those persons navigating the said Cleopatra.

Sixth. To the sixth article, he admits that, that the said collision occurred within the admiralty and maritime jurisdiction of this honorable court; and that the said Niagara is now lying within said jurisdiction, but he denies that the premises are true, as stated and set forth in said libel.

This claimant and respondent alleges in addition to what has been hereinbefore stated and alleged, the facts as sufficient and material for the defence of the said steamboat Niagara, as hereinafter more particularly propounded, are as follows: that is to say—

Ninth. That your respondent, with his associates, forming the East River Steamboat Association, before, and at the time of the collision above alluded to, were the sole owners and proprietors of the said steamboat Niagara, with her steam-engine, boilers, machinery, tackle, apparel, and other furniture, which said steamboat Niagara, the said East River Steamboat Association used and employed in transporting passengers and freight between New York and Bridgeport aforesaid; and between which said places she was regularly run in connection with the Housatonic Railroad, as above stated. That on the morning of Thursday, December 30th, 1847, the said steamboat Niagara left the pier at the foot of Market Street, in the East River, about half-past six o'clock in the morning, having on board passengers, freight, and mails, bound for Bridgeport, on one of her regular trips as aforesaid, fully and completely manned and equipped in every respect, with a competent and experienced master, pilot, and crew, tight, stanch, strong, and proper for the business in which she was engaged.

Tenth. That the steamboat Traveller, a boat running regularly between New York and New Haven, in the State of Connecticut, left her wharf at the foot of Peck Slip, East River, a little before said Niagara, on the morning of said 30th day of December, and passed up the river in advance of her towards Long Island Sound,

on one of her regular trips to New Haven aforesaid; the said Niagara following in her wake, and a short distance astern of her.

Eleventh. That the said Traveller, and the said Niagara (following in her wake), as is customary and proper for all boats under such circumstances with a head tide, after leaving the wharf, headed towards the City of New York; and the said Niagara when opposite to the wharf, at the foot of Corlear Street, was close in with the dock on the New York side, and within a few feet of a vessel then lying at the wharf; keeping within the eddy, which makes on an ebb tide under the point known as the Hook, or Corlear's Hook, in said city. That after passing the foot of Corlears Street, the said Niagara was steered along the shore to keep the advantage of the eddy, still following astern of the Traveller, and rather inside of her wake.

Twelfth. That those engaged in navigating the said Niagara, viz: John Brooks, Jun., her master and this respondent; Silas Reynolds, her pilot, on the look-out, in the wheel-house of said steamboat, and at her wheel, occupied in steering the vessel, first discovered a boat coming towards them in the opposite direction, which proved to be the steamboat Cleopatra, before the said steamboat had passed the Traveller; that they saw the said Cleopatra pass on the outside of said Traveller, at some distance from her; and between said Traveller and the Williamsburgh shore, and not on the inside of said Traveller, or on her larboard hand, as alleged in said libel, the Niagara at that time being to the westward of, or nearer to the New York shore than the said Traveller.

That the said Cleopatra, in passing the Traveller, was hid for a moment by the latter vessel, from the view of the persons navigating the Niagara; and as she came in sight again, it was then discovered by this respondent, and those in the wheel-house with him, as already stated, that the Cleopatra was altering her course, so as to sheer across the bow of the Niagara, and the course she was pursuing, and pass to the left of her, and between her and the New York shore. That upon discovering this change in the course of the Cleopatra, the master of the said Niagara having no room to sheer to the left, which would have brought his boat upon the wharves, immediately put his *helm* hard aport, so as to sheer out into the stream, and at the same time rung to slow his engine, and that the boats very shortly after *came* together side by side, the Niagara heading over towards the east shore of the river, and the Cleopatra heading in the contrary direction, towards New York; that the boats came together with a glancing blow, when they separated, and the Niagara went on her course up the East River, and through Long Island Sound; and this respondent avers, that no proper effort was made, when the collision appeared inevitable on the part of those navigating said Cleopatra, by slowing her engine, or otherwise to avoid collision, or diminish its effects, and that if such efforts had been duly and properly made, the collision

would either not have occurred, or would have resulted in the most trifling injury to either party.

Thirteenth. That the said Niagara, before and at the time of the collision, was in the usual, proper, and regular course of steamboats going up the East River, in the then state of the tide, keeping along the wharves, and in the eddy formed by the point of the Hook, and the turn in the river at that place, following in the track of the Traveller, and, as already stated, inside of her wake, and nearer than she was to the New York shore; that the usual and proper course of navigation for a boat under the circumstances in which the Cleopatra was placed, approaching the city with a fair tide, was to have kept out in the stream, in the true tide, which it was proper, and her duty to have done, and not to have approached the influence of the eddy tide, or slack water; that after the Cleopatra passed the Traveller, and changed her course to the westward, and towards New York, it was impossible for the said Niagara to do anything, but that which was done by her to avoid the collision, or lessen its consequences; that if she had been steered to the left, besides the imminent danger of running upon the docks, the boats would have come together forward of amidships, with the probable chance of sinking one or both; and that as the only hope of safety to both vessels, after the Cleopatra's course was altered, the Niagara was sheered out into the stream, and her engine slowed, whereby the boats came together side on, striking each other with their guards, amidships.

Fourteenth. That at the time the Cleopatra was passing the Traveller as already stated, and also when she changed her course and sheered in towards the New York shore, the said Niagara was considerably to the westward of the said Cleopatra, and nearer than she was to the shore; and if the said Cleopatra had continued on a course to pass outside of the Traveller, keeping in the true tide and out in the stream, which it was proper and usual, and her duty to have done under the circumstances, and which those navigating the Niagara had a right to expect she would have done, the collision in question would not have occurred, and that it is therefore to the want of care and skill, and the bad navigation and improper management of those navigating the said Cleopatra, and not from any want of care, skill, and attention, or any mismanagement on the part of those navigating the said Niagara, that the collision aforesaid, and the damages resulting therefrom, are solely to be ascribed and attributed.

Fifteenth. That the said collision and the damages therefrom are not justly chargeable upon the Niagara, or those persons engaged in the navigation of said steamboat, but are to be imputed to the heedlessness, bad management, and want of care and skill on the part of those persons navigating the said Cleopatra as above-mentioned and set forth, and he insists that the libellant is not entitled to the remedy and relief in the premises sought by him.

Sixteenth. That all and singular the premises are true, in verification of which, if denied, this claimant and respondent craves leave to refer to the depositions and other proofs to be by him exhibited in this cause.

Wherefore, this respondent prays that this Honorable Court would be pleased to pronounce against the libel aforesaid, and to condemn the libellant in costs, and right and justice to administer in the premises.

JOHN BROOKS, JR.

ALEX. HAMILTON, JR.,
Proctor for Claimant.

G. R. BOWDOIN,
Advocate.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

On this 28th day of April, 1848, before me personally appeared John Brooks, Jr., above named, and made oath that he is part owner and proprietor of the said steamboat Niagara, as one of the East River Steamboat Association, which association is sole owner of said steamboat, and is also master of said steamboat, and that as such master, he possesses, as he believes, greater and more particular knowledge of the matters stated in the foregoing answer than any other officer or member of said association; that he has heard read the above answer by him subscribed, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be on his information and belief, and as to those matters and things, he believes it to be true.

CHS. W. NEWTON,
U. S. Commissioner.

Filed April 29, 1848.

1848, May, 1: The libellant files his replication in the words and figures following:—

U. S. DISTRICT COURT,
Southern District N. Y.:

In Admiralty.

The replication of John Van Pelt to the answer and claim of John Brooks, for and on account of himself and associates, forming the East River Steamboat Association, and owners of the steamboat Niagara, her tackle, apparel, &c.

This repliant, saving and reserving to himself now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies

of the said answer, for replication thereunto says: that he will aver, maintain, and prove his libel to be true, certain, and sufficient in the law to be answered unto, and that the said answer is uncertain, untrue, and insufficient to be replied unto by this repliant without that, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is now and will be ready to aver, maintain, and prove, as this Honorable Court shall direct, and humbly prays as in and by his said libel he has already prayed.

OSCAR W. STURTEVANT,
Proctor for Libellants.

JOHN VAN PELT
vs.
The Steamboat NIAGARA, her tackle, &c.

Tuesday, Sept. 11, 1849.

This cause being called on the Calendar in its order, ordered hearing.

Tuesday, Sept. 11, 1849.

JOHN VAN PELT
vs.
The Steamboat NIAGARA.

Incorporation of Norwich and Worcester Railroad Company admitted, and ownership of steamboat Cleopatra by the Company at time of collision admitted.

William Wilcox (sworn). Pilot of Cleopatra in winter of 1847; was on board her 30th December, 1847, and saw the collision; was in pilot-house, hold of wheel; Brown, 2d pilot, with him.

Cleopatra was abreast of Cherry Street, at Corlear's Hook, at time of collision; he was abreast of Grand Street when witness first saw Niagara; the steamboat Traveller had passed point of Hook before Niagara came in sight, and passed between Cleopatra and New York shore close to docks; Cleopatra could not then have gone inside of Traveller, as C. was situated; when saw Niagara she was at point of Hook, and her course was about east, and witness's course S. W.; as she came in sight Niagara made attempt to go inside of Cleopatra, and then sheered off the other way to go outside; boats were then nearing each other rapidly; N. seemed soon to check her sheer and come directly for Cleopatra, not exactly head on, but bluff of her bow against them, and N. hit C. abreast of Cherry Street dock; C. had passed N. about 100 feet before was hit; C. was then inside of N.; collision broke crank of C., carried away wheel-house and wheel, rendering wheel wholly useless; when Traveller

passed C. was clear round the point, and went 50 yards inside of Cleopatra; Niagara not then in sight; C. was then on ebb-tide; when C. passed Traveller, Niagara made her appearance outside of a ship which lay at point of Hook; Niagara was then heading off towards Wallabout, but had hove her wheel starboard and was swinging her head in towards docks; boats struck very soon, should think not over one minute after witness observed N. so swinging in; when N. discovered C., N. hove her wheel over to port and sheered out, and the vessels struck.

Had N. kept directly out from point and not sheered in, she could have avoided C.; Niagara did not stop her machinery during the collision, and it did not appear to him to have been slowed at all; Cleopatra was about 100 yards from the docks at the time.

Witness had been 1st and 2d pilot of Norwich boats 10 years; had been first pilot 6 years; at time of collision he was in his ordinary course, at such tide always runs so unless prevented by vessels at anchor; not customary thing to hug the point, but is always understood to be the usage and duty of boats each to go to the right; C. was a stanch, well-built vessel, and properly rigged and manned at time, and had passengers and freight on board.

Sheer of Niagara's guard struck C. just forward of wheel-house, and came on rather quarteringly, but did not see point of collision as he stood in wheel-house forward of that point; when N. passed witness's wheel-house she was heading rather towards N. Y. shore, was sheering that way; C. was in true tide at time; when saw N. coming on him sheered C. more into shore, and kept out of her way; N. struck C. on larboard side and with her larboard side.

Supposes C. was 100 yards from docks when Traveller passed; should judge Niagara was 300 or 400 yards astern of Traveller when first saw her; began steering more in shore, when discerned N. to go inside of her and to her right; no slack tide at Hook or ebb-tide; the tide is a little slack below, and as far up as Walnut Street Ferry; the Traveller had hugged the Hook that morning.

It is not customary for boats on ebb-tide to hug docks down; keep in true tide or about middle of stream; Captain Van Pelt was not on board, witness had charge of her at the time.

Niagara might have seen Cleopatra as Traveller passed him; the pilot usually takes charge of boat in absence of captain.

Believes that was first trip of Traveller and Niagara against each other; supposed object of N. was to run into wake of Traveller if she could, but witness could not tell whether, when he saw her first, N. was at same distance from shore as T.; did not know there was to be a strife between the two; did not expect Niagara that morning; it was the first trip he knew of her making, and thinks it was first she made.

William W. Coit (sworn). Navigated East River and Sound 30 years; was master of boats and otherwise.

Was standing on forward deck of Cleopatra at time of collision; Traveller was just passing her as he stepped on the deck; and one of the crew remarked, that the two fast boats were out that morning.

Observed Niagara just then coming out of point, and heading very nearly upon the Cleopatra, but rather inclining in towards the N. Y. shore; witness then thought there was danger of collision, Cleopatra heading S. W. towards point of Hook; Niagara took a sheer out to east after she passed Hook, and C. sheered west, and witness thinks would have cleared each other if Niagara had not met her helm, checked the sheer, and sheered back towards C., and that caused the collision; in his opinion it was her anxiety to get back into wake of the Traveller, and that she checked her sheer a little too soon; had she held on to it would have gone clear; thinks C. was 100 yards from dock; sheering C. intended to lessen violence of the blow.

Niagara would have avoided C. entirely if she had kept the course she had when he first saw her, and had not sheered in.

There was nothing at all unusual in the course of the Cleopatra; as tide was, it would be natural for Niagara to hug point close; but if she saw a vessel coming, could haul off and go to right of her.

Has commanded steamboats; it is natural to hug the shore on ebb-tide, and it is customary to do so when there is nothing in the way; there was nothing unusual in the course taken by the Traveller and Niagara; other boats frequently do so.

When N. came round the ship, she was trying to head the tide and hug the shore; Cleopatra was on true tide at time of collision, 300 or 400 feet from docks; strongest tide is in middle of river; after passing the Hook boats keep off in middle of river down; by keeping out above the Hook as much is lost by distance as is gained in strength of tide.

Traveller had passed the point and got inside of C. before they met, and there was then no danger of collision; she was out of course of Cleopatra after passing her; Cleopatra tended in more towards shore, running directly towards point; always customary for vessels approaching each other in same range each to go off to the right and have sufficient room.

William Brown (sworn). 2d pilot: was in pilot-house; witness was on larboard side and Wilcox on starboard side of wheel; 13 years on East River; last 4 years 2d pilot; his station was a hand, had been in wheel-house; Cleopatra was in her usual course at time of collision; saw Niagara just as she came round ship; if she had kept on that course would have avoided C.; general opinion that Traveller and Niagara were rivals in speed.

Both pilots at wheel from beyond Hell-Gate; as a general course boats keep off into middle of river in going up against ebb-tide, because cannot see what is ahead if too near the shore, and gene-

rally going down on ebb-tide run close to Hook, till past it; as pilot he so runs the Cleopatra; when he first saw Niagara she was sheering in on coming round ship, and helm of C. was thrown over to port to sheer inside of her; C. was then about 100 yards from shore, and something more than that when Traveller passed; no recollection that C. headed over towards N. when they struck; can't say that Niagara sheered back after attempting to sheer out; did not see that engine was slowed at all before striking.

Edward W. Tucker (sworn). Was passenger on Cleopatra at time; was on forward deck, looking over guard; his attention was directed to Niagara when she first came in sight; thought she was trying to go ahead of C. inside, and then saw her change her course, and thought collision must take place, and about where he stood. It was broad daylight and clear; thinks she would have avoided C. if she had kept straight on when she rounded the point; collision was violent, and created great alarm on board.

Was on larboard guard; dodged back as N. approached, but had run back after N. passed and when she struck; think C. had careened over towards that side considerably; first saw N. just after passing Traveller; guard of N. was considerably above that of C.; did not observe that C. changed her course after seeing N.; she was all the time working in towards shore; at time of collision, at instant before, C. started in towards shore; before that, considered she was running directly down the river.

Engineer of Boston and Worcester Railroad; no connection with this company. Suppose from C. sheering in so suddenly that she careened, but has very slight experience in boats, and cannot say with certainty that she did careen.

Thinks N. struck 2 or 3 feet above guards of C.

Thought N. sat higher out of the water than C., which would bring her guards above latter.

Joseph Johnson (sworn). Lives in New London; was a passenger on the Cleopatra at time, and was on deck at time, outside of saloon on forward deck; did not see Niagara till she struck; she passed C. without stopping her machinery; did not observe that C. careened until after accident; when wheel fell, careened her the other way; habit of travelling over Sound once or twice a month; C. was in her usual course, as he thought.

Wednesday, Sept. 12—(continued.)

David McAffree (sworn). Mate of Cleopatra at time of collision; was then on forward deck; saw Traveller pass; discovered Niagara immediately after, say in a minute; Cleopatra about opposite Grand Street and 500 feet from dock. When he first noticed N. she appeared to be sheering to go across bows of C., and inside of her, but as tide struck her and she probably found she could not go inside, attempted to go outside, and then struck C.; had N. kept off, when witness first saw her, she would have gone clear; vessels at

that place take outside and haul over towards east shore and outside reef of 9th street—that is so on ebb-tide; they have to do, as tide cuts them off round Point, unless a very short turn is made. C. was in her usual course at time. When he first saw Traveller she had got the inside before C. reached the Point, about off Stanton Street, or between that and Rivington. On ebb-tide there is a small eddy from Catherine Market to Walnut Street—none above that, as tide comes down strongly at that place. Thinks C. had careened slightly towards N. at time of collision; was moving chain box to right her up.

Been on forward deck through Gate; C. was 15 or 20 feet outside of Traveller; boats were very close; about ½ tide, and strength of tide would be about the middle of river, and boat going up would encounter least tide along docks, till she got to Hook, and then would go off broad into river; would keep edge of eddy 100 to 150 yards from docks.

Cleopatra was sheering in when struck, and thinks was heading inside of head of pier, and N. was heading nearly opposite direction towards Williamsburgh shore, so as to swing together; thinks C. then 4 or 500 feet from dock; C. was running straight down along docks; when first made Traveller, C. headed to go inside of her to the right, as is usual, but Traveller also hauled inside and kept that course, which was reason of C. being so near Traveller when they passed; after they passed, C. was straightened down docks till made Niagara, then hauled in to keep to right side.

Does not recollect of anything in way of C. to prevent her keeping off to east; thinks had got chain boxes over when boats struck; N. struck about up to rail, say 3 feet above deck; thinks water is rather more slack above Walnut Street around the Point, but no eddy.

The Niagara was going quick when she struck; did not notice whether her engine was stopped or not; can't say there was a strife between her and Traveller.

Defence.

Richard Peck (sworn). Master of steamboat Connecticut; been about 20 years in command of boats, and in habit of passing up and down East River daily; usual course is to run close along the docks and hug the point of Hook (Walnut Street); there is an eddy from the Point to Delancey Street; does not think there is any between Walnut Street and Point.

In coming down on tide, keep S. off reef above Point, and rather on L. I. side, following strength of tide, whether to land on E. or N. River; has never known steamboats keep close to the docks going down on ebb-tide; should always look for boats coming down, out in middle of river; that is always done; the boat going up gains an advantage, and one running down obtains none.

If said steamer at Point go outside of one coming up, should calculate she would take same course in respect to another following her closely; that has been invariably done since he has been in the business; if coming close to dock going up, and saw another coming down, should hold in all he could towards the dock to avoid the other; should stop and do the best he could to escape collision. C. turning in as she did, would expose her to be struck nearly midships by Niagara, and less injury would be done by sheering N. and E. so as to bring them together side by side.

Not customary to give Point wide berth going up on East side; keep off enough to avoid reef opposite Walnut Street; that reef is 100 feet from shore; not custom for small boats to hug shore closer than large ones; not over 4 or 5 feet water on reef at low tide; large boats cannot go over it.

If C. had tried to go inside Traveller, and was on a sheer inside, as Niagara came in sight it was still her duty to keep out in middle of river and let N. go up inside at that place.

Not the custom at that place for down boat to take to right; never done since he has been on the river. Thinks this was not first trip of Niagara. The two boats were fast; does not know their relative speed; never heard there was a strife between the boats.

The piers and reef at Delancey Street stop tide and bear it off towards Wallabout, so as to produce an eddy along-side of reef on edge of it.

Titus Sandford (sworn). Pilot 25 years on East River; 22 years on steamboats; invariable practice on ebb-tide is to hug Point and keep in shore up to Delancey Street; going down on such tide, keeps midway of river, rather on Brooklyn shore; all boats take that course; always makes calculation that boats will run so if meet; shoul expect in this case, C. would go outside, whether he knew she went inside of Traveller or not.

Is now on Connecticut; been in a great number of boats; there is a slackwater or an eddy all along the shore to Grand Street; there is a little tide above Walnut Street, and then an eddy from Point.

John Bowns (sworn). In December, 1847, commanded the Traveller; left dock ½ past 6, Peck Slip; passing Market Street, saw Niagara coming out her slip; slowed his boat to let her go ahead; had orders not to try to pass her; and there was an arrangement with captain of N. for boat ahead to keep so.

After started out of slip, run about over to Brooklyn, and then put round to N. Y. shore and held up along the shore to point of Hook; hugged close to Walnut Street dock, within fifty feet (dock built out); kept close to Point, and up to Grand Street when met Cleopatra, and passed inside of her.

Thought C. was running about parallel with T. before meeting C.; seemed to cant in a little and then canted over again towards

Brooklyn, so as to be about parallel with T.; when met C. could not have come inside of N. without sheering in after passing T.; was surprised when saw C. cant in, and asked pilot what could be meant by it.

T. was not crowded; was running about her usual speed.

Been 14 years in command of boats.

Custom is for boats to run out in middle of river, going down on tide, and going up to hug the docks.

If witness had been after Traveller, should have calculated C. would take outside as she did with T.; that is the general practice with all boats; expected as matter of course C. would keep outside; had she attempted to get inside of T. the two must certainly have struck.

It is custom in meeting in Sound, to go to right of each other; that practice does not obtain in the East River, unless both boats are on tide; water is slacker from Fulton Market to Delancey Street, does not set up, but the down tide is checked and slower; the arrangement with captain of N. was right before this collision; this was 2d or 3d trip; boats had been together before.

Witness's owners directed witness to let N. keep ahead, as she had started ahead further up the river.

Peter A. Brott (sworn). 8 or 9 years pilot of steamboats; is now on Isaac Newton; was passenger on Niagara at time of collision, standing on forward deck; first saw C. when she and Traveller were passing; she run down E. of T.; after passing T. saw C. change her course by heading in land, inside of Niagara; saw her wheel hove over and she sheered quick in towards New York; should think T. then four or five lengths ahead of N.; boats were quite close together; does not think there was room between N. and dock for C. to go inside; when he first saw C. sheer in, was satisfied the boats must come together, if she attempted to go there; N. was quite close along the wharves in the wake of the Traveller; does not think the boats would have struck if C. had kept the same position after passing T.

When it was seen C. persisted in going inside the N. canted off a little, and witness got out out of the way; it was all done very quick; did not notice whether N. altered course before C. sheered in.

Wyatt Birdsall (sworn). Engineer of Traveller at time of collision; boat was not pushed; carried her usual head of steam to keep time to New Haven; saw C. pass under stern of ; was at larboard fire window; when first saw C., thought she was heading directly in for docks; that was after passing her; witness was looking out for Niagara.

Bow of C. was nearer the shore when he saw her than the Traveller was.

C. crossed wake of T. and shut the Niagara off so that witness could not see her.

Hosea Birdsall (sworn). Engineer of Niagara at time; boat was

not running beyond her usual and moderate gait; Captain Brooks intimated that boat was not to race with Traveller; so wit. understood from his brother, the engineer of Traveller, that neither boat was to try to pass the other; bell was rung to slow, and was obeyed; witness went to fireman to attend to fires and valve; felt the shock in a moment or two; always slow before stopping, if possible; in case of great danger stops at once, and runs risk of breaking engine.

Did not see assistant engineer shut off steam, but felt instantly that valve was closed; did not stop the boat; bell rang to open her, and then went on.

Thomas J. Davis (sworn). Been on steamboats since 1827; 20 years and more pilot; all the time he has been on the water; running against ebb-tide hugs close to town to get slackwater, or easier tide up to Broome Street; coming down on tide keeps out in middle of river, rather more to Brooklyn shore; that is his invariable practice; always expects vessels coming down to keep outside; in meeting on Sound, boat astern always is governed by manner in which boat ahead passes another, if two miles ahead; and rear boat expects to pass on same side; different in East River, for there boats claim advantage of the slackwater in shore.

Should in this case certainly have expected C. to pass outside, and taken his course accordingly.

Had he seen C. sheering in, would have sheered out, to escape collision; no recollection of ever seeing a Boston boat within 200 yards of Point, going down on ebb-tide, unless driven in there by some obstruction outside.

William Ostrom (sworn). Pilot 18 years on North River; now on Oregon; was passenger on Niagara at time of collision; was in the pilot-house; had hold of wheel with pilot (Reynolds); Captain Brooks also there; saw Traveller as started and N. stopped.

After T. passed, N. straightened up and followed up directly in wake of T.; thinks both boats within 100 feet of docks; saw C. pass east of T., 100 feet or so to east; after passing T. the N. swept under stern of T., and put in towards shore; N. was 4 or 5 lengths behind T.; Niagara was then slowed and wheel was *hove hard over*, and held so till boats struck; *helm not changed till after the collision;* they struck by the time *the helm was got hard over;* two boats came side and side together; C. was heeled over towards N., in consequence of sudden sheer given the C.; guards of N. struck as high up as rails of C. and mode of striking said C., from being run under; if N. had not sheered, would run head on to the C.

The course C. was on would have carried her on to the dock; Niagara did all that could be done in such case.

When N. struck C., her head was swinging off, and not towards the C.

Silas Reynolds (sworn). Pilot in East River 20 years; was pilot of Niagara at time of collision; now captain of Norwich; followed eddy from Market St. to Delancey St., as came out of dock; T. was

off on Brooklyn side, and stopped N. to avoid coming into her; as soon as T. passed his bows into eddy, N. followed directly after her; T. passed about her own width off from ship at Corlear's Pt.; there is a reef 50 or 60 feet from Walnut St., and witness hauled close to it, and a little inside of her wake; stern of N. in wake of her larboard wheel; smoke-pipe of N. passed within 5 or 6 feet of flying-jib boom of that ship; saw C. just as she lapped T.'s bow; C. was heading S. S. W., and if had kept that course would have brought up at Brooklyn.

Then Capt. Banks called to witness, that C. had hove her wheel to run inside; witness said it was impossible, she could not get in there: wheel of N. was instantly hove hard over, and kept so till the collision; also rung to slow; course was altered a point or so; not half a minute after saw C. before struck; C. was heeled down, so as to bring guards into water; heeled by running into different tide.

Niagara's stern was 100 feet past stem of C. when they struck; the two boats came together side by side; was hugging the Point as close as was safe, when he saw C. first not more than 50 feet off the docks.

Thinks C. was 300 yards from docks when she passed Traveller, and of course expected she would go outside of N.

Very often met boats under like circumstances, and never before knew one attempt to run inside of one going against tide.

Rear boat always calculate to go same side of leaving boat, that had once passed.

Knows Capt. Hough, and seen him a number of times running up against ebb-tide; followed him up the same time in another boat, and tried to pass him; Capt. Hough hugged shore close.

Collision occurred within a minute or half minute; the two boats could run 300 yards in a minute; thinks the two boats were 300 yards apart.

(*Testimony closed.*)

Our ads vult.

At a stated term of the District Court of the United States of America for the Southern District of New York, held at the City Hall, in the city of New York, on Tuesday, the twenty-third day of October, in the year of our Lord one thousand eight hundred and forty-nine.

Present, the Honorable Samuel R. Betts, District Judge.

JOHN VAN PELT
vs.
The Steamboat NIAGARA, her tackle, &c.

On reading and filing affidavit and notice of motion, and on motion of Mr. Sturtevant, for the libellant, Mr. Hamilton appearing for the claimants, it is ordered that the proofs in the cause be opened

1852.

so far as to allow the parties to introduce additional evidence before a commissioner, as to the custom alleged in relation to the navigation of the East River.

Vol. 5, No. 115. United States District Court for the Southern District of New York.

JOHN VAN PELT
vs.
The Steamboat NIAGARA, her tackle, &c.

O. W. STURTEVANT,
Proctor for Lib.

Filed the 23d day of October, 1849.

O. W. STURTEVANT,
For Libellant.

Testimony on reference under order of Court.

A. HAMILTON, JR.,
For Claimants.

January 31, 1850.

UNITED STATES DISTRICT COURT.

JOHN VAN PELT
vs.
The Steamboat NIAGARA, her tackle, &c.

The proctors for the libellant and claimant being present, pursuant to notice, the libellant proceeds with his testimony.

Jeron W. Williams being sworn, says: That he is at present master of the steamboat Worcester, belonging to the New York, New London, and Boston line; I have been engaged in navigating the Sound for 25 years, and have been in every capacity, from sailor to captain, and was master of a vessel for several years before I went steamboating, and have been pilot and master of steamboats for sixteen years; and during the running season, from two to three trips a week; upon which trips, we passed up and down the East River, and passed Corlear's Hook, which point we passed twice each day. It is our custom, usually, when we are passing down, and meeting a boat ahead, to pass her to the right; and in passing Corlear's Hook, we generally pass pretty close to the Hook, without passing so near as to make a sea to disturb vessels at the Hook, that being to the right of vessels coming up; it is usual and customary on all occasions, for boats going up the Sound from New York, to give the boat coming down the inside track; and I have never known but one instance to the contrary, in all my navigation of the East River. If in going up from New York, we take advantage of the eddy in shore, we consider we do it at our own

risk, and keep a look-out for any steamboat coming down towards New York, and go slow to avoid her. That is the custom we have always gone by, and I have never known any other custom. We do sometimes, in fact, very often come down towards New York, on the outside of the reefs, or shoals, and then we keep out in the middle of the stream, and then if we meet a steamboat in the middle, or near the middle of the stream, we calculate to keep to the right of her; but if she is close in shore, we of course take no notice of her.

On his *cross-examination*, he says: For the last ten or twelve years I have been master of the Traveller, Rhode Island, Worcester, Knickerbocker, Cleopatra, and several other boats; I never owned any part of the Cleopatra, and am not interested one dollar in the Norwich and Worcester Railroad stock; I have no interest whatever in the result of this suit. When going up the East River with a head tide, we generally go up in the middle, but do sometimes go up in the eddy; I should say, for the last five years, it has been our custom on an ebb-tide to take the middle of the river, though occasionally to take advantage of the eddy, we have gone in shore, which we do at our own risk. This has been the custom with all boats, running as I do for the last 20 years. Previous to the last five years the boats were slow; and then it was an object to take advantage of the eddy in shore going up. The boats are larger now than they were then, but that is not the reason of their keeping out now more than they did then, the greater speed of the boats now makes it less of an object.

Q. If you are navigating a boat up the East River, towards the Sound, and there was another steamboat ahead of you, and going the same direction, and your boat and the one ahead of you were close in shore, near Corlear's Hook, and the distance between your boat and the one ahead of you was from one to 200 yards, and you saw a steamboat coming down, pass on the Long Island side of the boat ahead of you, should you not expect such steamboat would pass on the Long Island side of your boat?

I should expect them to take their choice, and go to the right if they chose.

Q. If they undertook to go to the right of you, would they not throw their boat directly across the track of your boat, or your course?

That would depend on the situation of the boats, and the distance they were apart. The distance I refer to, is the distance between the boat I was in and the boat coming down. If the Niagara was coming up just above Walnut Street, and the Traveller was on the same course, and had just turned the Hook, and was on the inside, and I was in the Cleopatra coming down, and I had my reasons, and my boat was heading into the point of Corlear's Hook, I should contend for the right of going inside of the Niagara, and should consider I was bound to.

On further direct. Suppose you were coming down, and had approached within 300 or 350 yards of the point of the Hook, and should at that moment see a boat coming upon the other course, going round the point, would you or not then keep to the right of the boat going up?

There are positions in which a boat might be placed; if the boat going up was heading outside of me, I should of course take the inside of her; if a boat was in the eddy below Walnut Street, going up towards the Sound, when she should arrive at the point where she could be seen by the boat coming down, as before described, would she not be heading rather outside of you? He says she would be heading outside of me, if I were heading in to the point.

J. W. WILLIAMS.

Nathaniel M. Allen, being sworn, says: That he is the first pilot of the steamboat Worcester, running in the Boston line, and has been on the Sound for forty years, and a steamboat pilot for the last 48 years; and has been in the habit of passing Corlear's Hook in steamboats for the last 8 or 9 years, six times a week; I do not know of any regular rule of steamboats which constitute a custom in passing the Hook.

Q. When you came down the Sound, and meet steamboats at the Hook, do you usually take the right or the left?

I usually take the right when we are ahead, and head near on a line; we take all means to take the right; that has always been the course with me, and those I have been with.

On his *cross-examination:* In leaving New York, and going up the Sound, does the fact of a strong head tide make any difference in practice of navigation at Corlear's Hook?

It does not with me.

Q. Do you know whether the head tide makes a difference to other boats?

We generally pass nearer to the Hook on going up, against an ebb-tide, than we do on a flood tide; we do not get into much of the eddy at the Hook; at the point of the Hook we could not get near enough to the dock to get out of the tide if we tried to.

Q. Is there any difference in the navigation at Corlear's Hook, between the boats on an ebb-tide, starting from the North River, and those leaving from the East River?

None to my knowledge; I do not have any.

Q. When you speak of the practice, do you allude to and know of the practice of boats starting from both places? I do not know of anything of the practice of boats starting from the East River.

N. M. ALLEN.

Henry Champlin, sworn, says: That he is 2d pilot of the steamboat Worcester; I have navigated the East River 24 years, and pilot for 13 years; pretty much in steamboats.

Q. In steamboats passing down the Sound towards New York, and at the point of Corlear's Hook, is it your general custom to take the right or left of steamboats coming up?

We always take the right, meeting them ahead where we will, at Corlear's Hook or elsewhere.

Q. When you are coming down the Sound in the Boston boats, do you or not, in passing the Hook, make for the point of the Hook?

There is no general rule for that; if there are vessels in the way we generally go the side we can clear them best; if there are no vessels in the way we generally keep one quarter of the way nearer the Hook than the other shore.

Q. When you come down the Sound and are nearing the Hook, do you not head towards the Hook when there are no vessels in the way?

Yes, sir, we do; I know of no custom except to go to the right.

On his cross-examination. As to the custom of taking the right, to which you refer, do you agree with Captain Allen as to its taking effect when the boats are near on a line, or does their position more or less to the right or left of your course affect the existence of such a custom? He says if we meet them ahead, near on a line, we always take the right, even if we were in the middle of the stream at Corlear's Hook and the boat meeting us under the New York shore, we should still go to the right of her; that has always been the practice.

Q. Does the state of the tide, ebb or flow, make any difference in the practice of navigating at Corlear's Hook in going up the Sound from New York?

No, sir; it does not make any difference against an ebb-tide; we generally take near the middle of the stream, rather nearer the New York shore; we generally go about the same distance from the Hook—not a boat's width difference whether coming down on an ebb or flood tide. In passing the Hook we are generally one-third the distance across from the Hook. The Worcester runs in the same line with the Cleopatra, and has done so for some time past, but they do not belong to the same parties that they did at the time of the collision about 2 years since.

On further direct. That with the boats that come to in the East River, the custom is different on an ebb-tide from those that go round the Battery to the North River; I mean, after passing Corlear's Hook, those that come to in the East River keep nearer the Brooklyn shore, to give them an opportunity of rounding to. If in passing down the East River, and in passing the Hook and within 300 yards of the Hook, and should then see a boat coming round the Point, we should always pass to the right.

HENRY CHAMPLIN.

Adjourned until 11 A. M. to-morrow.

Friday, Feb. 1st.

The proctors for the libellant and respondent appearing, the examination of the witnesses on the part of the libellant is proceeded with.

William Wilcox being recalled on the part of the libellant as to the question of custom of navigation of the East River, under exception of claimant, being sworn, says: That he is captain of the steamboat Cleopatra, and was at the time of the collision her first pilot. In your experience as a pilot in the East River on board of steamboats, is there any special custom observed by boats passing Corlear's Hook at any time of tide?

The custom in passing the point of the Hook coming towards New York, is to turn the point of the Hook as close as we can, that being to the right coming down. In steamboats going up the Sound they give it a berth a proper distance to let a boat pass to the right coming down. Is there any custom, to your knowledge, for boats passing up the Sound from New York, to hug the point of the Hook and pass on the inside of vessels coming down? There is no such custom.

On his cross-examination. In navigating the East River it is customary for steamboats to take advantage of eddies or slackwater, or do they run without regard to them? There is no custom to that effect with those large boats; we cannot handle them.

Q. Is there any custom with regard to other than the large boats on these points? There is in certain places, but not at the Hook, to my knowledge. Why is there a difference, if any, no regard being paid to tide, to go closer to the Hook in passing in one direction rather than in the other?

We shorten the distance. In coming to New York the custom is to hug the point of the Hook; in going from New York (no vessels in the way), we give the Hook a berth of sixty yards, or one-third the distance across the river; hugging the point of the Hook coming down we sometimes go within twenty yards—that is about the average distance.

On further direct. Being asked, is it or is it not a custom in navigating the East River, for steamboats to keep to the right? he says it is. Is not that an additional reason why, in coming down, you hug the point of the Hook, because it is to the right? Yes, sir.

In steamboats going up, when I say we give the Hook a berth of sixty yards, or one-third of the river, I mean one-third of the width of the river, supposing that to be about sixty yards.

On further cross. After passing the point of the Hook, what is the custom of steamboats coming down on the ebb-tide?

In going to land in the East River we take the middle of the stream, nighest to the Brooklyn shore; if landing in the North River, we steer from the point of the Hook to a point on the Brooklyn shore near the Fulton ferry.

W. WILCOX.

George Merrills sworn. I know the first pilot of the Cleopatra; has been pilot in the East River 15 or 16 years, most of the time in steamboats, and in the habit of passing Corlear's Hook almost every day.

In your experience as a pilot on board of steamboats navigating the East River and Sound, have you known of any custom observed by steamboats in passing Corlear's Hook? We generally run for the point of the Hook coming down, and pass it from 20 to 50 yards; and in going up the Sound we generally give the Hook a berth of about one-third the distance across the river.

On his cross-examination. I have been connected with the Citizen steamboat 15 or 16 years; since, the Eureka, the Mutual Safety, the New Haven, the Cricket, the Worcester, the Knickerbocker, and the Cleopatra; the Eureka ran to Bridgeport, and Capt. Fitch commanded her when I was in her.

As to the boats named, was the practice of or custom of passing the Hook you have spoken of adopted by them all? I have always adopted the practice in all the boats I have been in. Some of these boats are small boats. I acted as pilot, and directed the course of these boats I have named. Did you or not, in passing the Hook, pay any regard to the tide, whether head or fair, in the various boats you have named?

No, sir, not in respect to passing the Hook. The size of the boat made no difference in passing the Hook.

GEORGE MERRILLS.

William Brown being sworn, says: That he is now the second pilot of the Cleopatra, and has been a pilot for a number of years.

Adjourned until 11 A. M. to-morrow.

February 2d.

The proctor for the libellant appears and adjourns the reference until Wednesday, the 6th instant, at 10 A. M.

Wednesday, Feb. 6th.

The proctor for the libellants and claimant being present, and *William H. Lewis* being sworn, says: That he is first pilot of the steamboat State of Maine, and has been a pilot on steamboats on the East River for three years, and has been running on the Sound for twenty-two years. I have been pilot of the steamer Governor, Bay State, and State of Maine, and have been in the habit of passing the point of Corlear's Hook as often as six times a week. In coming down the Sound and passing Corlear's Hook, we generally pass to the right of steamboats coming up; that is the custom; we pass to the right hugging the point of Corlear's Hook.

In going from New York towards the Sound and passing Corlear's Hook, what is your custom?

That depends on circumstances. If it is flood tide we always keep in the middle of the river; that is if there nothing in our way

we go up close to the Hook, but always intend to go to the right of a steamboat.

On his *cross-examination.* I have never piloted any other steamboats than those I have just mentioned.

WILLIAM H. LEWIS.

Adj'd until the 8th, at 11. A. M.

Friday, February 8th, 1850. The proctor for the parties appearing, the libellant proceeds with his testimony:—

Thomas G. Jewett, being sworn, says:—

That he is now in command of the steamboat State of Maine, and has navigated the Sound. This is the third winter. We pass the point of Corlear's Hook six times a week. Our general course in going up the East River is to keep as near the middle of the river as we can the whole distance up; we keep to the right when we can, but that depends on circumstances as to how we are situated. In coming this way, after passing Blackwell's Island and passing round Corlear's Hook, is it or is it not your custom to take to the right, and run near the Hook? He says that depends on circumstances. If we saw nothing in the way coming down on this shore we should come down and haul around the Hook, giving it a berth of 2 or 3 lengths. It is very seldom that we come down on this side, only when the tide is pretty well up and in case of a fog, when we keep on the side we happen to be. On an ebb-tide, we usually come down on the north side of Blackwell's Island; after passing the Island, we take one shore as often as the other. The large boats, such as the Bay State and Empire State, do not come down on this shore but very seldom. The State of Maine, that I am now in, and the Cleopatra were about the same size as to tonnage.

On his *cross-examination.* He says he has commanded the Governor, and for a short time the Empire State. The Governor is not as large a boat as the State of Maine or Empire State. I should never come on this side of the buoy, which lays off the Dry Dock. In the Governor, nothing being in the way at high water, it would make no difference which side of the buoy we should take. Does not consider the Governor or the State of Maine as among the large boats he has spoken of. In coming this way on an ebb-tide, is there a custom or practice in regard to the hugging Corlear's Hook for the class of vessels such as the Governor and State of Maine? I do not know of any custom or practice, as I said before. At the strength of the ebb-tide at Corlear's Hook, as a general thing, the water would have fallen about one-third opposite Corlear's Hook, there being nothing in the way the large boats would keep in the middle of the river. We should follow the same course in the State of Maine and Governor.

On further direct, he says: If we should pass Blackwell's Island and keep on this shore, we in that case pass close to the Hook. It

does not follow that because we pass on the north side of Blackwell's Island that we keep on the shore; we sometimes cross over. In passing Corlear's Hook there is no custom that can be universally observed; we must be governed by circumstances; that is to avoid vessels or steamboats that are in our way.

THOMAS G. JEWITT.

Adjourned February 11th, at 12 at noon.

Feb. 11th, adjourned to May 14th.

Tuesday, May 14th, 1850, the parties appear pursuant to adjournment.

Joseph J. Comstock, being sworn, says: That for fourteen years, until recently, he has been commanding steamboats navigating Long Island Sound, and acted as pilot for two or three weeks every year while I have been in command, and am well acquainted with the navigation of the East River in the vicinity of Corlear's Hook. I know the steamboat Niagara and Cleopatra. What is the custom, if any, for steamboats in passing Corlear's Hook at any and all times of tide? On passing Corlear's Hook, as we do all other points, far enough off to see that there are no vessels coming round the corner.

In passing up from New York into the Sound around Corlear's Hook, what is the course that you take in boats of the size of the Niagara and Cleopatra? The custom is too keep far enough off to see that there are no boats coming down, in either state of the tide, vessels of that size and speed; all vessels pass far enough off to avoid a collision with vessels coming round Corlear's Hook. All steam vessels, large or small, pass nearer Corlear's Hook, going up or down, than we do the other side. In steamboats of the size of the Cleopatra coming towards New York from the Sound, would she or not pass to the right of other steamboats of the same or larger dimensions that she might meet at the point of Corlear's Hook? She would pass to the right of them, if there is distance enough between the two to sheer clear of each other; that has been my custom always.

On his *cross-examination.* Suppose a steamboat coming towards New York and going round the Hook, with the strength of the ebb-tide, how far off from the end of the Hook would it be best for her to be?

It would be best for her to be full one-third of the distance across. That is the customary distance for large and fast steamboats, from one-third to a greater distance across.

Suppose another boat going up against an ebb-tide, taking advantage of the eddy or slackwater under the Hook, and from 150 to 200 feet from the end of the docks, on which side might she expect a boat coming with the ebb-tide to pass her?

If they are coming head and head, to take the right.

Would a boat going up in the eddy against an ebb-tide expect that a boat coming down with the tide would leave the customary course you have suggested and enter the eddy or slackwater?

She would not.

With the exception of the Bay State, and others of the largest and heaviest class, has it not been a practice, up to within two or three years past, in turning round Corlear's Hook against the strength of the tide, for boats to avail themselves of eddy or slackwater under the Hook? Boats of the small class usually have.

On further direct. Is it proper for large boats of the size of the Niagara, and do they take such advantage of the eddy as to go as near as 150 to 200 feet of the docks?

It is not prudent, or is it customary for boats of that large class to go so near the docks as not to be able to see if any boats are coming down round the point of Corlear's Hook.

Although we intend to stick to our usual and customary rules in passing that point, we are sometimes prevented by local causes, it being a crowded part of the navigation; ferry-boats and vessels of smaller class; steamboats passing Walnut Street going towards the Sound should be from one-third to 1½ the distance across the stream from the dock to enable her to see boats coming in a contrary direction at the foot of Broom or Grand Streets.

Either vessel is supposed to be one-third or one-half the distance across the river, and under such circumstances would pass each other to the right.

In December, 1848, you took the strength of the ebb-tide at the foot of Walnut Street, the eddy did not extend beyond that point.

On further cross. South of Grand Street ferry the building out of the piers lately has caused more of an eddy by their extension south of Grand Street than there was before.

Assume two steamboats going the same direction against the tide from 3 to 500 feet apart, and a boat meeting them should pass to the left or right of the leading boat, on which side of the following boat would you expect her to pass, there being no vessels in the way?

On the same side as when passing the first boat; we might take a sheer or have commenced, that would have enabled us to pass on the other side of the other boat with a little help from that boat; it would be extremely dangerous and imprudent to attempt to pass across the bow of the following boat, the boats being from 3 to 500 feet apart; I assume that all the boats saw each other.

JAS. J. COMSTOCK.

U. S. DISTRICT COURT.

The Steamboat NIAGARA, her tackle, &c.
vs.
JOHN VAN PELT.

Testimony on the part of the claimants.

April 18, 1850: The proctors for the respective parties being present, the claimant proceeds with his testimony.

Charles Weeks being sworn for the claimant, says: That he is now master, and has been for 15 years pilot on the Sound; he now commands the Roger Williams.

In going up the Sound against the ebb-tide, what is the custom of navigation in passing Corlear's Hook? We always take the York Island side, the left hand side from 20 to 30 rods from the docks; we keep in there to keep out of the way of vessels; and there is an advantage in keeping in shore to avail one's self of the eddies and slackwater.

Coming towards New York with an ebb-tide, what is the custom of navigation in passing Corlear's Hook?

We always keep over to the Williamsburg side, in the strength of the tide.

I should expect that boats that I meet at that point, to be navigated according to the custom I have stated.

I have often met boats on an ebb-tide at that point; I never knew a boat coming down on an ebb-tide go inside of my boat going up in the eddy at the point of Corlear's Hook.

Did you not recently meet the steamboat Massachusetts on an ebb-tide when you were in the Niagara when near Corlear's Hook, and what was the course of the two boats in passing each other?

We were coming down in the Niagara, and were driven in towards the point of the Hook by the ferry-boats, and after passing them we saw the Massachusetts; we thought we would go inside of her (N. York shore); we immediately stopped, backed water, and went outside of her on the Long Island side.

When you first saw the Massachusetts, was she nearer to the New York shore than you were, and which side of you did she attempt to pass, so that you stopped and backed? She was about the same distance from the N. York shore, and kept a straight course along the docks.

Adjourned to Friday, April 19, at 9 A. M.

Friday, April 19. The parties appearing, the witness, Charles Weeks, is cross-examined: I have been a pilot about 15 years on the Sound in steamboats plying to and from the City of New York; I have been on the New York, Eureka, Mutual Safety, and Niagara, and Huguenot; the Niagara is the largest of those boats.

The practice of taking the inside going up on an ebb-tide is never

varied, to my knowledge, off Corlear's Hook; if I see nothing to interfere, I always go within 20 or 30 rod of the dock at Corlear's Hook going up on an ebb-tide.

The Cleopatra is about the size of the Eureka, smaller than the Niagara; the Huguenot and Mutual Safety run to Bridgeport; they were smaller than the Niagara or Cleopatra; I have never seen any difference between the large and small boats in the custom of navigating at that point on an ebb-tide; the State of Maine, Worcester, the C. Vanderbilt, and Rhode Island were about the size of the Niagara, and they pursued the same practice; the Roger Williams, which I am now in, is rather a smaller boat than some I have named; the Mutual Safety was about 10 years old; I met the Massachusetts in the afternoon about 5 o'clock, the tide ebb, about the strength of the ebb, a year since.

I made no memorandum of the circumstance at the time; I was then in the Niagara; I never spoke of this circumstance until yesterday to any one; I was not pilot of the Niagara at the time of this collision; the R. Williams belongs to Boatman & Burtis; Captain Brooks never had any interest in her, except that he once chartered her.

On further direct. I have a distinct recollection of meeting the Massachusetts at the time referred to; we were driven into the dock by the ferry-boat; after passing the ferry-boat, we were steered into the dock, and there saw the Massachusetts, and supposing we were so near in she would let us keep our course; the moment we saw she would not we stopped and backed, and hove our wheel hard a starboard, and sheered off outside of her.

We were astern of the Traveller daily going up the Sound; she never varied from the custom I have spoken of; she was of about the size of the Niagara.

On further cross. We met the Massachusetts on the occasions mentioned, right off Grand Street, at which time we were two or three hundred feet from the dock; but for the ferry-boat, we should have been off Williamsburgh in the midway of the river; our place of landing was at the foot of Market Street; on the ebb-tide we went over to the Brooklyn shore for the purpose of rounding to at our slip.

The circumstance of rounding to has nothing to do with our course off Corlear's Hook; when off the Navy Yard we begin to take steps to round to.

CHARLES WEEKS.

Solomon B. Stone, being sworn, says he has been pilot and master of steamboats on the Sound from 12 to 13 during that daily. On the ebb-tide, strength of the ebb, what is the custom of navigation off Corlear's Hook, for steamboats coming to New York?

It is the custom, as far as my experience and observation goes, for all classes of boats, both large and small, coming towards N. Y.

on an ebb-tide, to keep out in the middle of the river, in the true current, and for the reason of avoiding steamboats and other vessels working up in shore, stemming the tide. A steamboat coming down under such circumstances loses by getting in eddies or slack-water under the point of the Hook, and runs the risk of coming in collision with ferry-boats and others vessels coming up.

If you were in command of a steamboat going up the Sound on an ebb-tide at any time of the day or night, would you depend upon the course of navigation of a boat coming in the opposite direction, which you have just described, and steer your own boat accordingly? My practice has always been, and I should steer my boat near the York shore, as always is the custom.

And I should always expect boats coming down the river to follow the custom of keeping out in the middle of the river, in the true current.

S. B. STONE.

Adjourned until Thursday, the 25th instant, at 10 A. M.

Thursday, April 25. The Proctor for the claimant proceeds with his testimony.

Sidney Bayles being sworn, says: That he has been a Hell-Gate pilot for twelve years, and during that time has been engaged almost daily in navigating the East River and Sound, and as a pilot goes up and down, past Corlear's Hook.

What is the custom of navigation for steamboats coming towards New York, on the ebb-tide at Corlear's Hook? The custom is for steamboats, as far as I have seen, coming down on the ebb-tide, to keep in the middle of the river, in the true tide, and for boats going up against the tide to take the eddy, and keep in shore; I now speak of the navigation turning Corlear's Hook; I have never known steamboats coming down on an ebb-tide hugging the Hook or keeping in the eddy or slackwater at the Hook, unless compelled to do so by ferry-boats, or other boats being in the way. A vessel keeping out in the ebb-tide bound to New York, must gain by keeping in the true tide, instead of the eddy or slackwater.

SIDNEY BAYLES.

Alfred Churchill (sworn) for claimants: That he has been a pilot on the East River and Sound for about twenty-three years, and is now pilot of the Connecticut, one of the largest class of boats; I have been in steamboats on the Sound for 23 years, and during that time have been pilot of large and small steamboats.

What is the custom of navigation for steamboats large or small, coming towards New York on an ebb-tide, at the point of Corlear's Hook, and rounding it?

It has been the custom to keep off in middle of the river in the true tide.

This is the universal custom for steamboats of every size.

If you were navigating a steamboat to the eastward against an ebb-tide, and expecting to meet a boat coming in the other direction, would you act upon the custom you have spoken of, and steer your own boat accordingly? (Obj. to.)

I certainly would.

What is the custom of navigation off Corlear's Hook for steamboats going to the eastward, against the ebb-tide?

To keep as near the docks as you can with safety.

Is that done by large boats as well as by small boats? It is.

About how near to the wharfs at that point would the boats run?

From 3 to 5 rods.

On his Cross-examination. In navigating a boat to the eastward on an ebb-tide, you say you would pursue the custom you have mentioned. What course would you pursue under such circumstances?

I should keep as near the docks as I could with safety.

Is that the custom with large boats?

I never made any difference, and never have seen any. It is as easy to navigate large boats, and as safe, round the point of Corlear's Hook. There is no difficulty nor danger in navigating the large boats in the eddies round the docks, and round the Hook; there may be in some places; I have been in the Connecticut a few days; I have been in the New York, the Hero, the Charter Oak, the Cleopatra, the Massachusetts, the Rhode Island, and in other steamboats, and have been first pilot in those boats. In December, 1848, I think I was in the Traveller, but not on the morning of the collision; Captain Brown commanded the Massachusetts when I was in her; it was my universal custom when in all these boats going up on an ebb-tide, to hug the shore and turn the Hook short; I did not regard the rule of keeping to the right, but always hugged the shore on an ebb-tide.

On further direct. In the Cleopatra coming towards New York on an ebb-tide, did you ever, except when forced by vessels being in the way, hug the point of Corlear's Hook, or come into the eddy or slackwater at the point of the Hook? (Obj. to.)

I never did.

ALFRED CHURCHILL.

William T. Skidmore (being sworn): That he has been a Hell-Gate pilot for 20 years, and has been in the habit of going up and down between New York and Hell-Gate two or three times a week; I am not in the pilot-house often, but observe the course of steering the boats, as I have been on board of vessels under my control; I have observed in passing Corlear's Hook, for them to take a circuit, and keep in the true tide.

Have you ever observed or noticed this custom departed from, except when vessels were in the way? (Obj. to). I never have;

vessels that I am in the habit of going up in against an ebb-tide, keep near the New York shore in the eddy.

On his Cross-examination. As a Hurl-Gate pilot, I most usually pilot sailing vessels.

Have you ever had your attention specially called to the custom of steamboats passing Corlear's Hook? I have when I have been pilot for a steamboat; the St. Nicholas, which boat I was engaged to take through the Gate; I have in piloting vessels to and from Hurl-Gate, been at the point of the Hook at the moment steamboats were passing, and have observed their course 500 times, and perhaps a 1000 times.

WILLIAM T. SKIDMORE.

Jacob H. Vanderbilt (being sworn): Master in the Sound seventeen years; for the last four or five years I have been on shore; I was the agent for the Norwich and Worcester Railroad Company, owning the Cleopatra at the time of the collision; I had daily experience in passing up and down the East River of the custom of navigation. The custom of steamboat navigation on an ebb-tide in passing Corlear's Hook, coming to the city, is for the steamboat to take the channel half way toward the Long Island shore. That custom extended throughout the period I was master, and so far as I know, that custom still exists.

Did you ever know that custom to be departed from? I never did, except when vessels were in the way.

What is the custom of passing Corlear's Hook on an ebb-tide, vessels going up the East River? With large boats to go as near the New York side as possible, say from one to two hundred yards from the docks. Small boats will go inside the docks; keep closer in than the large boats; keeping the eddy as near in as possible.

When you first heard of this collision, what opinion, if any, did you express of the departure or compliance with the custom you have mentioned, on the part of the Cleopatra? (Obj. to.)

When I ascertained the tide was ebb, I think I said to the pilot of the Cleopatra that he was wrong.

On his cross-examination. The custom for large steamboats in passing Corlear's Hook on an ebb-tide, is different from that of small steamboats; the small boats generally go closer in.

The large boats do, in approaching the point of Corlear's Hook, sometimes feel the effect of the eddy; at the Point there is no eddy. It is more difficult and dangerous to navigate the large boats in the eddies than the small boats.

J. H. VANDERBILT.

Gilbert Seaman (sworn). Says he has been a Hell-Gate pilot for 20 years. I have been on an average 3 or 4 times a week to and from Hell-Gate.

Steamboats at Corlear's Hook on the ebb-tide, coming to New

York, keep off in the middle of the river in true tide; going the other way, they hug the point of the Hook on an ebb-tide. I have had hundreds of opportunities of observing the course of steamboats off Corlear's Hook. There is an eddy extending up to the point of the Hook, and at times there is a change of tide at the point of the Hook, but it is confined very close to the point of the Hook.

On his cross-examination. He says his general business is to pilot sailing vessels. My observation as to the custom has been made when I have been a passenger on board of steamboats, and at other times; I have not had my attention particularly called to it, but by observing it in passing.

GILBERT SEAMAN.

David T. Glover (sworn). Says that he has been a Hell-Gate pilot thirteen years, and has been in the habit of going up and down in steamboats 3 or 4 times a week. I have frequently passed steamboats, while piloting other vessels, while passing Corlear's Hook, going on an ebb tide both ways, and have observed their course. I heard the testimony of Mr. Seaman, and concur fully with him as to the custom of navigation of steamboats off Corlear's Hook.

DAVID T. GLOVER.

Joel Stone (sworn). Says he has been pilot and master of steamboats on the Sound 28 years, and have navigated both large and small boats. I now command the C. Vanderbilt; she is one of the largest class. I have made a day trip for 8 years, leaving in the morning and returning in the afternoon, passing Corlear's Hook twice a day. I have frequently met steamboats at the point of the Hook going in both directions. The custom for steamboats coming down the Sound on an ebb-tide, is to keep up as near to the middle of the true tide as we can when passing Corlear's Hook; in going the other way on an ebb-tide, to go up in the edge of the eddy with the large boats and still nearer in small steamers. In going up against the tide with large or small boats, we never keep off in the ebb-tide unless compelled so to do by vessels or boats being in the way. I have met a great many steamboats when I was going up against the tide, within 150 feet of the docks, when no obstacle or impediment in the way.

Has a steamboat under such circumstances ever passed between you and the wharf?

I don't know of any instance except ferry-boats. On the first of the tide there is no eddy off the point of the Hook, or very little; towards the middle, from the middle to the last of the tide, it is from 100 to 150 feet from the point of the Hook.

Has the eddy off the Hook been larger within a few years than it was before?

It has been thrown further off from the building of the new dock at Delancey Street.

JOEL STONE.

At a stated term of the District Court of the United States of America for the Southern District of New York, held at the City Hall in the city of New York, on Wednesday the twelfth day of March, in the year of our Lord one thousand eight hundred and fifty-one—Present, the Honorable Samuel R. Betts, District Judge.

JOHN VAN PELT
vs.
The Steamboat NIAGARA, her tackle, &c.

This case having been heard on the pleadings and proofs, and argued by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court, that the libellant recover in this action against the steamboat Niagara, her tackle, &c. the damages sustained by the collision in the pleadings mentioned, together with his costs to be taxed.

And it is further ordered, that it be referred to a commissioner to ascertain and compute the amount of such damage, and to report thereon to this court with all convenient speed.

Vol. 5, No. 115. United States District Court for the Southern District of New York. John Van Pelt *vs.* the Steamboat Niagara, her tackle, &c. O. W. Sturtevant, proctor for libellant. Interlocutory Decree and Order of Reference.

Filed the twelfth day of March, 1851.

UNITED STATES DISTRICT COURT.

JOHN VAN PELT
vs.
The Steamboat NIAGARA, her tackle, &c. } 5,115.

February 16th, 1852.

Testimony on Reference.

Alexander Hawkins, sworn, says: He was a ship and steamboat joiner, in January, 1845; I know the steamboat Cleopatra; I did work on that boat in January; it was said that she had been damaged by a collision with the steamboat Niagara; exhibit *A* is the bill for the repairs done at that time, amounts to $216 95; we commenced on the 8th of January, and finished the evening of the 11th.

The repairs done were necessary from the damages by the collision; one side of the wheel-house was carried away, and nearly two-thirds of one side of the boat; the bill has been paid. No work was done except to repair the damages.

A. HAWKINS.

James Murphy, sworn, says: He is steam engine and boiler manufacturer, in January, 1848; I knew the steamboat Cleopatra in 1848; I did work for her, commencing on the 31st Dec., 1847, and continued until the 10th January, 1848; the work done upon her engine, her shaft, and crank, in consequence of the collision, amounted to $357 19; and the same was paid, and the receipt for the same is produced, marked exhibit *B*, *G*, *W*, *M*.

She repaired in consequence of the shaft and part of the machinery being broken by a collision; no other work was done at that time, except to repair the damages by the collision; we kept a separate account, presuming that it might be asked for; we afterwards did work on her, but that is not included in the above account.

JAS. MURPHY,

Adjourned until Wednesday 18th, at 10 A. M.

Wednesday, February 18th, 1852. The proctor for the libellant being present, the reference is proceeded with:—

Horace Wright, being sworn, says: That he was a blacksmith in 1847 and 1848; he recollects the collision between the Niagara and Cleopatra; and did work in January, 1848, for and on board the Cleopatra, occasioned by the collision; the bill now presented and marked exhibit *C*, *G*, *W*, *M*, commencing January 3d, is a correct bill of the materials furnished, and the work done, amounting to $147\frac{33}{100}$, and has been paid; I know of no charge for work done, or repairs made, which were not necessary, on account of the damages sustained by the collision; the charges are all of the regular and usual charges for similar work.

HORACE WRIGHT.

Jeremiah Simonson (sworn) says: That in the years 1848 and 1849, he was one of the firm of Bishop and Simonson, shipwrights, doing business in the City of New York; that he recollects the time of the collision between the Niagara and Cleopatra, in 1848. Our firm did the repairs for the Cleopatra, occasioned by the collision; on being shown the bill, marked exhibit *D*, *G*, *W*, *M*, all except the first and last charge was for the repairs necessary, on account of the collision; it amounts, exclusive of the first charge, and the last charge, to $338\frac{39}{100}$; also the bill marked exhibit *E*, *G*, *W*, *M*, of $46, for wharfage, is for the wharfage of the boat while the work was going on; both bills have been paid; all the work was necessary from the collision; the charges are made at the usual rate of charges for similar work, and are fair and reasonable.

JEREMIAH SIMONSON.

Adjourned until 10 A. M. to-morrow.

February 19, adjourned until Saturday 21st, at 12 at noon.
" 21, " " Thursday 26, at 10 A. M.
" 26, " " Monday, 1st March, 10 A. M.

Monday, March 1st, 1852. The proctors for the respective parties being present, the reference is proceeded with on the part of the libellants.

Daniel Bacon (sworn) says: That he was clerk on board the Cleopatra at the time of the collision, and kept the accounts of the receipts and expenditure; the Cleopatra lay at the ship-yards, undergoing repairs over two weeks; the crew were retained on board and paid, with perhaps the exception of a few waiters; the list now produced is the crew list of the month of December, they are marked exhibits *E*, and *F*, *G*, *W*, *M*; I paid that crew list for December, 1847, the wages of $934 40, for the month of December; that was paid January 1st, 1848; I remained on board the steamer while undergoing repairs, and paid the crew at the same rate of wages; I think there was a regular crew list made out for January; it might have been for January and February in one, but I think they were separate; J. H. Vanderbilt was the general agent of the boats here; the exhibit *G*, *G*, *W*, *M*, is signed by him; I know of the payment of $35 for their towing charges; the exhibit is a statement of the amounts of bills of repairs to the Cleopatra's damage done by the steamboat Niagara, amounting to $1690 $\frac{40}{100}$, and signed by said Vanderbilt, as general agent; I know Mr. Vanderbilt's signature.

On his *cross-examination:* The pay list for January and February ought to be in the Office of the Railroad Company, at Norwich; I don't think there was any other boat on the route, in the place of the Cleopatra; in fact, if there had been, I should have gone in her; I am positive there was not; Captain Van Pelt remained with the boat, and superintended the repairs; I am sure that the officers and crew received the same pay as before; they were hired by the year; and whether the boat was laid up or not they received the same pay; I should suppose not more than half the waiters were discharged; the crew list will show all that.

The board of the men as charged at $180, must have been for marketing, while the boat was laid up; I paid the bills; there must have been vouchers for everything; Mr. Jacob H. Vanderbilt may have gone to Nicaragua.

DANIEL BACON.

Adjourned until 10 A. M. the 2d March inst.

March 2d, adjourned to March 10th, at 10 A. M.

July 21st, 1852. The proctors for the respective parties being present, the reference on the part of the libellant is proceeded with:—

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Jacob H. Vanderbilt, being sworn, says: That at the time of the collision, he was the agent of the owners of the Cleopatra; and after the repairs had been completed, made an estimate of the expenses incurred, which, is marked exhibit *G*, *G*, *W*, *M*, and amounts to $1690 40.

The pay rolls *H* and *I* are the pay rolls of January, 1848, when the boat was repairing; she was undergoing repairs 16 days.

On his *cross-examination*, he says: That to the best of his recollection, the Cleopatra resumed her trips after the repairs were completed; and on examining the pay roll, he finds that for January, 1848, the amount of pay for 16 days, is 420, instead of $450; making the above $1660 40, instead of $1690 40.

It is admitted that the value of the Cleopatra was $20,000.

J. H. VANDERBILT.

Adjourned to 27, at 12 A. M.

Exhibits all withdrawn, except exhibit *G*, *G*, *W*, *M*, which is agreed upon as the damages corrected by Mr. Vanderbilt, $1660 $\frac{40}{100}$.

The following are the amounts of bills of repairs to the Cleopatra's damage, done by the steamboat Niagara.

Pease and Murphy's bill, engineers,	$340 45
Horace Wright bill, blacksmith,	147 33
Bishop and Simonson's do., ship carpenters,	299 70
A. Hawkins do., joiner,	216 96
Stephen Squiers, painter,	9 52
Cales and Thorn,	11 44
Towing,	35 00
Wages of crew, 16 days,	450 00
Board of crew, 16 days, 30 men,	180 00
	$1690 40

G. G. W. M.

J. H. VANDERVAL,
Agent.

DISTRICT COURT OF THE UNITED STATES
for the Southern District of New York:

JOHN VAN PELT
vs.
The Steamboat NIAGARA, her tackle, &c. } Commissioner's Report.

In pursuance of a decretal order made in the above entitled cause, on the twelfth day of March, in the year of our Lord one thousand eight hundred and fifty-one, by which, among other things, it was referred to the undersigned, one of the Commissioners of this Court, to ascertain and compute the amount due the libellant for the

damages sustained by the libellant in the pleadings mentioned, and to report thereon to this court with all convenient speed—

I, George W. Morton, the Commissioner to whom the matter was referred, do report, that I have been attended by the proctor for the libellant and the claimants, and have taken and examined the testimony offered in support of the libellant's claim for the damages aforesaid, and do find that there is due to the libellant for the damages sustained by said steamer, including wages and expenses of the crew, the sum of $1,660 40

For interest on disbursements 456 71

For interest on $20,000, the agreed value of the boat during the detention of repairing 53 32

$2,170 43

The sum of twenty-one hundred and seventy $\frac{43}{100}$ dollars.

Dated the twenty-first day of July, A. D. 1853.

All which is respectfully submitted.

GEORGE W. MORTON,
U. S. Commissioner.

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UNITED STATES DISTRICT COURT
for the Southern District of New York, 129.

JOHN VAN PELT
vs.
The Steamboat NIAGARA, her tackle, &c.

O. W. STURTEVANT,
Proctor for Libel't.

Commissioner's Report.

Filed the third day of August, 1852.

At a Stated Term of the District Court of the United States of America, for the Southern District of New York, held at the City Hall in the City of New York, on Tuesday, the third day of August, in the year of our Lord one thousand eight huudred and fifty-two.

Present: The Honorable , District Judge.

JOHN VAN PELT
vs.
The Steamboat NIAGARA.

On reading and filing the report of George W. Morton, United States Commissioner, to whom the above matter was referred, by which there is reported due the libellant for the damages sustained by the collision, the sum of twenty-one hundred and seventy $\frac{43}{100}$

dollars. On motion of Oscar W. Sturtevant, Proctor for libellant, it is ordered, that the report be in all things confirmed, and that the libellant recover in this action against the steamboat Niagara, the amount reported due, together with his costs to be taxed, and that the steamboat be condemned therefor, stipulations for costs.

And on like motion, it is further ordered, that out of the proceeds of the and value when paid into the registry of the court, the Clerk of this Court pay to the libellant or his proctor, the amount reported due, together with his taxed costs.

And on motion of O. W. Sturtevant, Proctor for the libellant, it is ordered, that unless an appeal be taken to this decree within the time limited and prescribed by the rules and practice of this court, that the stipulators for costs and value pay unto the Registry of the Court the amount of their stipulations, and the Clerk distribute the proceeds in satisfaction of this decree.

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UNITED STATES DISTRICT COURT,
For the Southern District of New York:

JOHN VAN PELT
vs.
The Steamboat NIAGARA, &c.

O. W. STURTEVANT,
Proctor for Libel't. 221.

Final Decree on Confirmation of Commissioner's Report.

Filed and entered the 3d day of August, 1852.

U. S. DISTRICT COURT.

JOHN VAN PELT
vs.
The Steamboat NIAGARA.

The claimants except to the Commissioner's report, inasmuch as he has allowed interest on disbursements, no interest being allowable. The amount not being settled until the final hearing before the Commissioner. The sum of $456 61 allowed as interest is hereby excepted to

A. HAMILTON, JR.,
Pr. for Claimant.

August 3, 1852.

Filed August 3, 1852.

At a stated term of the District Court of the United States of America for the Southern District of New York, held at the City

Hall, in the City of New York, on Saturday, the thirteenth day of November, in the year of our Lord one thousand eight hundred and fifty-two.

Present, the Honorable Samuel R. Betts, District Judge.

JOHN VAN PELT
vs.
The Steamboat NIAGARA, her tackle, &c.

This case having been heard on exceptions to the commissioner's report, and argued by the advocates for the respective parties, and due deliberation being had in the premises: It is now ordered, adjudged, and decreed by the court that the exceptions in regard to the allowance by the commissioner of the sum of four hundred and fifty-six $\frac{71}{100}$ dollars as interest on the disbursements be allowed. And it is further ordered that it be referred back to the commissioners to restate the amount, and to allow the libellant interest on the disbursements for repairs from the time the same were actually made, and if on such restatement of the amount the interest is less than $456 71, no costs will be allowed either party on this exception. If, however, the sum of $456 71 is allowed by the commissioner for interest on the restatement, then the libellant to recover full costs, including the costs on the exceptions.

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UNITED STATES DISTRICT COURT, 225,
For the Southern District of New York:

JOHN VAN PELT
vs.
The Steamboat NIAGARA, her tackle, &c.

O. W. STURTEVANT,
Proctor for Libellants.

Decree.

Filed 13th day of November, 1852.

DISTRICT COURT OF THE UNITED STATES
For the Southern District of New York:

JOHN VAN PELT
vs.
The Steamboat NIAGARA, her tackle, &c. } Commissioner's Report.

In pursuance of a decretal order made in the above entitled cause, on the thirteenth day of November, in the year of our Lord one thousand eight hundred and fifty-two, by which, among other things, it was referred to the undersigned, one of the commissioners

1853.

of this Court, to ascertain and compute the amount due the libellant for damages by the collision referred to in the pleadings, and to restate the account and allow interest on the actual disbursements from the time they were actually made, and to report thereon to this Court with all convenient speed—

I, George W. Morton, the commissioner to whom the matter was referred, do report that I have been attended by the proctor for the libellant and claimant, and have taken and examined the testimony offered in support of the libellant's claim upon such restatements and do find that there is due to the libellant on such restatement of the account for interest on the disbursements from the time the same were actually made, the sum of $425 57

Damages as before reported 1660 40

Interest on $20,000, agreed value (16 days' detention repairing) 53 32

$2139 29

Interest on $2139 29, from 31st July to date . . 57 42

$2196 71

the sum of twenty-one hundred and ninety-six $\frac{71}{100}$ dollars.

Dated the 18th day of December, A. D. 1852.

All which is respectfully submitted,

GEORGE W. MORTON,
U. S. Commissioner.

O. W. STURTEVANT,
Proctor for Libellant.

A. HAMILTON, Jr.,
Proctor for Claimant.

Vol. 5, No. 115.

UNITED STATES DISTRICT COURT.
for the Southern District of New York.

JOHN V. PELT
vs.
The Steamboat NIAGARA, her tackle, &c.

O. W. STURDEVANT,
Proctor for Libel't.

Commissioner's Report.

Filed the 4th day of January, 1853.

At a stated term of the District Court of the United States of America for the Southern District of New York, held at the City

Hall at the City Hall in the City of New York, on Tuesday the fourth day of January, in the year of our Lord one thousand eight hundred and fifty-three—

Present, the Honorable Samuel R. Betts, District Judge.

JOHN VAN PELT
vs.
The Steamboat NIAGARA, her tackle, &c.
The EAST RIVER STEAMBOAT ASSOCIATION, claimants.

On reading and filing the report of George W. Morton, United States Commissioner, to whom the above matter was referred, by which there is reported due the libellant, for damages by collision, the sum of two thousand one hundred and ninety-six $\frac{71}{100}$ dollars. On motion of Oscar W. Sturtevant, proctor for the libellant, it is ordered, that the report be in all things confirmed, and that the libellant recover in this action against the steamboat Niagara, her tackle, &c., the amount reported due, together with his costs to be taxed, and that the said steamboat be condemned therefor.

And on like motion, it is further ordered, that out of the proceeds of the stipulations of the said claimants when paid into the registry of the court, the clerk of this court pay to the libellant or his proctor the amount reported due, together with his taxed costs; and it is further ordered that in the taxation of the libellant's costs there be deducted therefrom the costs of the libellant on the exceptions to the commissioner's report.

Vol. 5, page 115.

UNITED STATES DISTRICT COURT
for the Southern District of New York.

JOHN VAN PELT
vs.
The Steamboat NIAGARA, her tackle, &c.

OSCAR W. STURTEVANT,
Proctor for Claimants.

ALEX. HAMILTON, JR.,
Proctor for Claimant.

Final Decree on Confirmation of Commissioner's Report.

Filed and entered the fourth day of January, 1853.

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U. S. DISTRICT COURT.

The Steamboat NIAGARA, her tackle, &c., claimants,
vs.
JOHN VAN PELT.

Sir: Please to take notice, that the claimants appeal from the final decree rendered in this cause on the day of January, 1853, to the next Circuit Court of the United States for the Southern District of New York, and you will please to have the papers returned to the said Circuit Court.

A. HAMILTON, JR.,
Proct'r for Claim'ts.

To GEORGE W. MORTON,
Clerk U. S. District Court, Southern District N. Y.

Filed January 14, 1853.

CIRCUIT COURT OF THE UNITED STATES OF AMERICA
for the Southern District of New York, in the Second Circuit.

The Steamboat NIAGARA, her tackle, &c., The East River Steamboat Association, claimants and appellants,
vs.
JOHN VAN PELT, libellant and appellee.
} Bond for costs.

Know all men by these presents, that we, Alexander Hamilton, Jr., and Solomon Alosson, are held and firmly bound unto the above-named claimants and appellants, in the sum of three thousand dollars, to be paid to the said libellant, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the thirty-first day of January, in the year of our Lord one thousand eight hundred fifty-three.

Whereas, the above-named claimants have prosecuted an appeal to the Circuit Court of the United States for the Southern District of New York, to reverse the decree rendered in the above entitled suit, by the Judge of the District Court of the United States for the Southern District of New York.

Now, therefore, the condition of this obligation is such, that if the above named appellants shall prosecute their appeal to effect and answer all damages and costs, if he fail to make their appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

S. ALOSSEN, [L. S.]
ALEXANDER HAMILTON, JR. [L. S.]

Sealed and delivered, and taken and acknowledged this 31st day of January, 1853, before me,

CHARLES ELLIOTT SCOVILLE,
U. S. Comm'r.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Alexander Hamilton, Jr., and Solomon Alossen, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of six thousand dollars, over and above all his just debts and liabilities.

ALEXANDER HAMILTON, JR.
S. ALOSSEN.

Sworn to, this 31st day of January, A. D. 1853, before me,

CHARLES ELLIOTT SCOVILLE,
U. S. Comm'r.

I approve of the sufficiency of the sureties to the within bond, dated Feb. 2, 1853.

SAML. R. BETTS.

5, No. 115. U. S. District Court.

The Steamboat NIAGARA, her tackle, &c., clm'ts and appl'ts,
vs.
JOHN VAN PELT.

Bond for costs on appeal.

A. HAMITON, JR.,
Pr. for Appel'ts.

Filed February 2, 1853.

CIRCUIT COURT OF THE UNITED STATES
for the Southern District of New York, in the Second Circuit.

The Steamboat NIAGARA, JOHN BROOKS, Jr., and associates, forming the East River Steamboat Association, duly incorporated under the laws of the State of Connecticut, owners, &c., appellants and respondents,

vs.

JOHN VAN PELT, master of the Steamboat CLEOPATRA, and the Norwich and Worcester Railroad Company, owners, &c., libellants.

To the Honorable the Circuit Court of the United States, for the Southern District of New York, in the Second Circuit.

The petition and appeal of the above-named respondents and appellants, respectfully shows: That on or about the third day of March, 1848, a libel was filed in the District Court of the United

States for the Southern District of New York, against the above-named appellants and respondents, setting forth therein among other things, that the above-named libellants were a duly incorporated company, and owners of the steamboat Cleopatra, and employed in the freight and passenger business, between the ports of New York and Norwich, in the State of Connecticut.

That on the 30th day of December, 1847, the said steamboat Cleopatra, being on her passage to the port of New York, and in the East River, about abreast of the foot of Grand Street, was run into by the steamboat Niagara, causing thereby great damage to the said steamboat Cleopatra.

That the said libel amongst other things, prayed that a process of attachment and monition might issue against said steamboat Niagara, as usual in like cases, and that the said steamboat Niagara might be condemned and sold, &c., as by the said libel on file in the office of the Clerk of the said District Court, will on reference thereto appear, and to which your petitioner begs leave to refer.

And your petitioner further shows, that process having been issued and the said steamboat Niagara having been seized, the said John Brooks, Jr., and his associates, the East River Steamboat Association, filed their claim and answer in the said District Court, setting up among other things, that they were the owners of the said steamboat Niagara, and that on the said 30th day of December, 1847, she did come in collision with the said steamboat Cleopatra, whereby said steamboat Cleopatra did sustain considerable damage, but that they were ignorant as to the amount thereof. They also denied any negligence on their part, and alleged that the negligence or unskilful management of the Cleopatra, was the sole cause of the collision, and prayed that the said District Court would be pleased to pronounce against the libel, and condemn the libellants in costs, as by the said answer will more fully appear, reference thereto being had.

And your petitioner further shows, that the said cause came on to be tried before the Honorable Samuel R. Betts, Judge of the District Court, on the 11th and 12th days of September, 1849, upon the pleadings and proofs in the said cause; and the said Judge having heard the proofs and allegations of the respective parties, and the arguments of their respective counsel, did, on the 12th day of March, 1851, decide and make a decree in the said cause, accordingly condemning your petitioner in damages and costs to be taxed, and also that it be referred to a commissioner to inquire into and ascertain the damages caused by your petitioner, and that the commissioner report the same to the said District Court.

Your petitioner further shows, that in pursuance of said decree, the parties appeared before the commissioner, and upon the proofs and allegations, the said commissioner made his report, dated 21st day of July, to which report your petitioner took various exceptions; and that the said libellants did also except thereto, as will

appear by the exceptions on file in the office of the Clerk of the said District Court.

And your petitioner further shows, that the exceptions so taken to the commissioner's report were afterwards brought on to argument before the said Judge of the said District Court, who afterwards, on the 24th day of January, 1853, having heard the arguments of counsel for the respective parties, decided and made a final decree accordingly; and your petitioner is advised and insists that the decree of the said District Judge, made on the said 24th day of January, 1853, was and is erroneous, and your petitioner hereby appeals from the same.

Your petitioner further states, that he does not intend on this appeal to make new allegations, or to pray a different relief, but to seek a new decision upon proofs and allegations which came before the District Judge and upon such further proof as your petitioner may produce, and that your petitioner intends upon such appeal to produce and take further testimony.

And your petitioner prays that the said decree hereby appealed from may be annulled, reversed, and held for naught, and that such other decree may be made as to the said Circuit Court shall seem just, and that the decree of the said District Court be reversed, and the said libel be dismissed with costs, of your petitioner to be taxed, and that such other relief may be granted as shall to law and justice appertain.

And your petitioner will ever pray.

ALEXANDER HAMILTON, JR.,
Proctor for Claimants.

W. Q. MORTON,
Advocate.

SOUTHERN DISTRICT OF NEW YORK, ss:

N. P. Rogers being duly sworn, says that on the 2d day of March, 1853, he served upon Oscar W. Sturtevant, proctor for libellant herein, a copy of the within petition of appeal by delivering the same to him personally in the office of the Clerk of the United States District Court.

N. P. ROGERS.

Sworn to before me, this 2d day of March, 1853.

GEO. W. MORTON,
U. S. Com'r.

Filed March 2d, 1853.

1970.

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered, that on this twenty eighth day of April, in the year of our Lord one thousand eight hundred and fifty-three, I, John W. Nelson, a commissioner duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit, under and by virtue of the Acts of Congress, entitled "An Act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States," passed February 20th, 1812, and the Act of Congress, entitled "An Act in addition to an Act entitled 'An Act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the Act entitled "An Act to establish the Judicial Courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office at the new City Hall in the city of New York, in the said Southern District of New York, in the State aforesaid, William Ostrom, to testify and the truth to say, on the part and behalf of the respondents in a certain suit or matter of controversy now depending and undetermined in the Circuit Court of the United States for the Southern District of New York, wherein the Steamboat Niagara, &c., John Brooks and associates, are respondents and appellants, and John Van Pelt, for himself and associates, is libellant and appellee; and the said William Ostrom being about the age of forty-two years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said William Ostrom, and he did thereupon depose, testify, and say as follows, viz:—

That he was on board the steamboat Niagara when a collision occurred between her and the steamboat Cleopatra during the month of December, 1847.

Capt. John Brooks commanded the Niagara; Capt. John Van Pelt commanded or was the captain of the Cleopatra. Witness was on board the Niagara as a passenger.

Was on the pilot-house at the wheel, helping the pilot steer, before and at the time of the collision.

Capt. Brooks and Silas Reynolds, 1st pilot, was also in the pilot-house.

Witness at that time had been a steamboat pilot about 18 years; since that time witness has been pilot of the steamboat Hendrick Hudson; at the time of collision was pilot of Oregon, running on the North River.

Where was the Niagara on that morning, when you first saw the steamboat Cleopatra?

As nigh as I could judge, she was in the neighborhood of Grand

Street; I think it was a little above Grand Street; I did not take particular notice.

We were at that time straightened up, and our helm amidships.

The Traveller, I should judge, was 6 or 7 hundred feet, and I think to extend over 800 feet.

What was your position as to the wake and heading of the Traveller?

We were following right after her wake—might have been a little to the westward; this might bring the Niagara between the wake of the Traveller's larboard wheel and that of the boat.

We were then, I should think, 6 or 8 lengths of the boat, maybe more, above the point of the Hook where we had rounded; don't know exactly the distance—guess at that.

I am perfectly certain that at that time we had straightened up above the Hook, and our helm was amidships.

Where was the Cleopatra at this time?

A. To the eastward of the Traveller about 50 yards, and above her to the northward and eastward.

Describe the manner in which the Cleopatra was steered from this time.

The Cleo. came down in a straight parallel line with the Traveller to the eastward of her, and after passing her, took a severe or rank sheer to the westward towards the city, heading for about Grand Street, maybe a dock or two above heading across the Traveller's track, and ahead of the Niagara.

Getting foul of the Niagara prevented the Cleopatra from going head into the dock.

Witness says he thinks he has testified to this before; in going round the point of the Hook the wheel was put to starboard, until straightening up, when the wheel brought amidships; when we first saw the Cleopatra sheer in to go across her bow, we slowed the Niagara and hove her wheel to port, and that canted her outside of the Cleopatra; they struck side by side; I think a little forward of the wheel; the Cleopatra was heeled down to port, her guards within two feet of the water, or in that neighborhood, this was caused by the rank sheer of the boat; in my opinion, if the Traveller had been at anchor, and the Niagara at anchor, the Cleopatra could not have passed the Traveller as she did, and gone inside of the Niagara without hitting the dock; that is, she could not have straightened down inside without hitting the dock.

Q. Is it true that the Cleopatra upon that occasion, before this collision took place, had crossed the stern of the Traveller, and straightened herself down along the docks?

A. No, sir; it is not true, she had not; I cannot be mistaken about that.

Q. If a steamboat fifty yards on one side to the left of one she is meeting, means to cross to the opposite side of her, what, in your

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judgment as a pilot, is the proper mode or manner of doing so, crossing her bow?

A. Her duty is to commence in time, and get the boat in parallel shape; I should want to commence getting the boat in shape probably a thousand yards off, to show the opposite boat what I am going to do; this applies to long boats; shorter boats can do it in shorter space; I apply this to a boat three hundred feet long, coming down on a strong ebb-tide, renders it necessary to get the boat in shape farther off; I think with a short boat I could have performed that manœuvre, those two being at anchor; I should not think I could do it with a short boat without slowing; if the Cleopatra had kept on her course when passing the Traveller, I think she would have cleared the Niagara fifty yards to the eastward; I should think I could not be mistaken as to the fact, that when the Cleopatra was passing the Traveller, we were straightened up in the wake of the Traveller; helm amidships, to the best of my judgment, my hand was on the wheel.

Cross-Examined.

We left Margaret Street about six in the morning, and this occurrence was about half-past six; I came into the wheel-house shortly after she started; I had no employment on board of the boat; was a passenger; I had never been a pilot on the East River; I did not understand there was to be a contest between the boats that morning; I did not understand that that was the first time that the Traveller was running out in opposition to the Niagara. There was not a contest between those boats during that day before she arrived at her destination.

Re-Examined.

I understood from the engineer that they had orders from the owners to pay no attention to racing with the Traveller; I supposed there was to be a strife, but understood afterwards that there was not to be any; I know Captain Brooks, he was said to be A No. 1, as an East River pilot.

W. OSTRAM.

Sworn and subscribed before me, this 28th April, 1853.

JOHN W. NELSON,
U. S. Com.

UNITED STATES OF AMERICA,

Southern District of New York,
City, County, and State of New York, ss:

Be it remembered, that on this 28th day of April, in the year of our Lord one thousand eight hundred and fifty-three, I, John W.

Nelson, a Commissioner duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit, under and by virtue of the Acts of Congress, entitled "An Act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States," passed February 20th, 1812, and the Act of Congress, entitled "An Act, in addition to an Act, entitled 'An Act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States,'" passed March 1st, 1817, and the Act entitled "An Act to establish the Judicial Courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at the new City Hall, in the City of New York, in the said Southern District of New York, in the State aforesaid, Peter A. Bradt, to testify and the truth to say on the part and behalf of the respondents in a certain suit or matter of controversy now depending and undetermined in the Circuit Court of the United States for the Southern District of New York, wherein the steamboat Niagara, &c., John Brooks and associates are respondents and appellants, and John Van Pelt, for himself and associates, is libellant and appellee; and the said Peter A. Bradt, being about the age of years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid; I did carefully examine the said Peter A. Bradt, and he did thereupon depose, testify, and say as follows, viz:—

I was on board of the Niagara at the time of the collision with the Cleopatra, in 1847; I was a passenger; I was standing on the forward deck; the steamboat Traveller was, as near as I could judge, five or six lengths ahead; we were on the way to Bridgeport; the Niagara was heading nearly in the wake of the larboard wheel of the Traveller, perhaps a little inside of her; this was after they had passed the Hook, and straightened up parallel with the docks; this was her position when I first saw the Cleopatra coming down.

Q. In what position was the Cleopatra when you first saw her as to the Traveller?

A. When I first saw the Cleopatra she was about abreast of the Traveller, to the east.

Q. Suppose the Cleopatra to have kept the course she was on when you first saw her, how would she have gone in reference to the Niagara?

A. The course she was heading when I first saw her, she would have gone clear of the Niagara, to the east of her, as near as I can judge some two or three widths; after first seeing the Cleopatra, within half a minute or thereabouts, I discovered the Cleopatra sheering very rankly into the westward; a second or two before they came together she was heading well into the docks; the little knowledge I had of steamboating, it seemed to me the boats could

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not clear each other; I noticed the Niagara after the Cleopatra sheered so rankly across her brow, to cant off some to the eastward; I helped shove the chain box across the deck and then left, and went on the starboard gangway; I got past the shaft a little, when they came together; had the Niagara not canted she would have quartered head upon the Cleopatra's larboard forward gangway, and would have cut her down; as it was they came siding.

Q. After straightening up above the Hook, did the Niagara head at any time to the eastward of the Cleopatra until as you have stated?

A. No, sir; not from the time I saw her till the Niagara canted; I saw them heaving at the Niagara's wheel in order to cant her off.

Q. As a pilot and navigator, what was the navigation of the Cleopatra upon that occasion, as to being proper and safe, or improper and dangerous?

A. My opinion about that is, that it was a fearful act, and very improper; I never was a pilot on the East River.

PETER A. BRADT.

Sworn and subscribed before me this 28th April, 1853.

J. W. NELSON,
U. S. Com.

UNITED STATES OF AMERICA,

Southern District of New York,
City, County, and State of New York, ss:

Be it remembered, that on this 28th day of April, in the year of our Lord one thousand eight hundred and fifty-three, I, John W. Nelson, a Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit, under and by virtue of the Acts of Congress, entitled "An Act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States," passed February 20th, 1812, and the Act of Congress, entitled "An Act, in addition to an Act, entitled 'An Act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States,'" passed March 1st, 1817; and the Act entitled "An Act to establish the Judicial Courts of the United States," passed September 24th, 1789; did call, and cause to be, and personally appear before me, at my office, at the new City Hall, in the City of New York, in the said Southern District of New York, in the State aforesaid, Silas Reynolds, to testify, and the truth to say, on the part and behalf of the appellants in a certain suit, or matter of controvery, now depending and undetermined in the Circuit Court of the United States for the Southern District of New York, wherein the steamboat Niagara is appellant, and John Van Pelt appellee; and the said Silas Reynold, sbeing

about the age of years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid; I did carefully examine the said Silas Reynolds, and he did thereupon depose, testify, and say as follows, viz:—

I was on board the Niagara when a collision took place between her and the Cleopatra, in Dec. 1847; I was pilot on board; I have been engaged since, steamboating, as pilot and master; I am now master of the steamboat Island City; she navigates on the East River; runs to Flushing; before and at the time of the collision I was in the wheel-house; I took the wheel at Market Street, and was there at the time of the collision; Mr. Ostram had hold of the wheel with me, a North River pilot; Captain Brooks was also in the wheel-house with me; my recollection with regard to the occurrence is as fresh as if it were no longer ago than yesterday.

Q. Where was the Niagara when you first righted your helm, or wheel, and straightened up?

Withdrawn.

Q. When the Niagara was abreast of the foot of Water Street, at the Hook, what was the condition of the Niagara's helm?

A. The helm was straight, and we were going straight up the river, parallel with the docks.

Q. How was the Niagara heading as to the wake of the Traveller at that time?

A. She was heading a little inside of the Traveller in her larboard wheel wake.

Q. How far ahead did you judge the Traveller to be?

A. I should judge she was five or six lengths.

Q. Where was the Cleopatra at this time?

A. When I first saw her, she was crossing the Traveller's bow; she was to the westward, and crossed over to the eastward, on the larboard side of the Traveller.

Q. Where was the Niagara when you saw the Cleopatra so crossing out past the bow of the Traveller?

A. She was between the Hook and Water Street.

Q. Was that the first of your seeing the Cleopatra?

A. Yes.

Q. Where would that heading of the Cleopatra have carried her?

A. The course she was heading then would have brought her just about to the Navy Yard.

Q. Supposing her bound round to the North River, what would have been her proper course?

A. Her proper course would have been right down the course she was going when I first saw her.

Q. Did the Niagara ever head, that morning, to the eastward of the Cleopatra?

A. She never headed to the eastward of the Cleopatra from the

time we turned the Hook until I see the Cleopatra sheer into the westward to go inside.

Q. For what place did that sheer make the Cleopatra head?

A. Right for the docks of Water Street.

Q. What prevented her going into the dock?

A. The two boats coming together side and side; we had hove our wheel hard a-port.

Q. If she had cleared the Niagara would she have run into the docks?

A. She would, as sure as she had been a steamboat, to use a steamboat phrase.

Q. Before that porting of the Niagara's helm, what was her heading as to the Cleopatra?

A. She had been heading to the west of the Cleopatra.

Q. How far did the two boats lap each other when they struck?

A. The Niagara's stern was about square with the Cleopatra's stern.

Q. Is it true or untrue that at any time before the collision, the Cleopatra crossed the stern of the Traveller between the Niagara, and straightened herself down along the docks in the wake of the Traveller, or straightened herself down the docks at all?

A. It is true that she crossed the Traveller's stern, but it is untrue that she straightened down before the collision.

Q. Can you possibly be mistaken as to the Cleopatra's not having straightened down after sheering in across the stern of the Traveller?

A. I cannot be mistaken; she never straightened down until the two boats came together.

Q. What effect had the collision upon straightening the Cleopatra down?

A. It broke her sheer in towards the dock, so that her bow swung clear of the dock; Capt. Brooks ran aft immediately, and on his return I asked him if the Cleopatra had gone into the dock.

(Latter answer objected to.)

Q. Suppose the Traveller and Niagara to have been at anchor, in the same positions they were at the time, in your judgment as a pilot, could the Cleopatra have done what she attempted without running into the dock?

A. No, sir; and I don't think a boat a hundred and fifty feet long could do it.

Q. What do you consider the Cleopatra intended to do?

(Objected to.)

A. I suppose the Cleopatra intended to go between the Niagara and the dock.

Q. If when two steamboats are approaching, and one is off to the left of the other, and she intends to go to the right of the one she is approaching by crossing her bow, what is the proper mode of doing it as to time and distance, and so on?

A. If a steamer is coming down with the tide, as they were, it is not proper she should come out of her course to run into an eddy tide to go to the right of the boat bound up close into the dock; it is not customary to do so; if there is no eddy tide, I should expect a boat intending to cross my bow to go to the right to sheer in, in time.

Q. How far off, coming down with an ebb-tide, ought a boat to show her intention of crossing your bows to the right?

A. I should say half a mile.

Q. Can you account for the Cleopatra's being navigated upon that occasion in the manner she was?

A. I can't in no other way than in supposing that on board the Cleopatra they supposed the two boats were racing, and it was done to make the Niagara stop or sheer out into the tide to give the Traveller a little more start.

Cross-examined. This was the 29th or 30th December, 1847; it was about 10 minutes of 7 in the morning; the Traveller and Niagara had not been running on the same line before that morning; that is, I mean they did not run to the same place; all I mean is, that on that morning they went out together; I can't recollect whether the Traveller went out the morning preceding the collision or not; the Niagara did, and I piloted her. I did not hear or know that any contest was to take place between the boats that morning, that is, between the Traveller and Niagara; they were both called fast boats, and left at the same hour, and went up the East River together, and they did not belong in the same line, unto the same owners. I was told by Capt. Brooks that there was to be no racing; that the boat that started ahead was to stay ahead. I don't know why he told me so; I think that is about all he said.

Re-examined. *Q.* You have just said that that was about all; have you anything to superadd?

A. That there was a mutual understanding between the owners that there should be no racing; that the boat that started ahead should stay ahead; this is what captain Brooks told me; and that had been and was adhered to during the whole winter.

(Anything that took place after the collision objected to.)

Q. When, to the best of your recollection, was the information given to you by Capt. Brooks, that there was to be no racing?

A. I think it was before the Niagara started on the route to Bridgeport.

Q. When did the Niagara commence the route to Bridgeport, to the best of your recollection?

A. I think it was the 17th or 18th of December, 1847; and it was before this that Capt. Brooks gave me the information above.

SILAS REYNOLDS.

Sworn and subscribed before me, April 28, 1853.

J. W. NELSON,
U. S. Com'r.

UNITED STATES OF AMERICA,
Southern District of New York, ss.

I, John W. Nelson, a commissioner duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit, under and by virtue of the Acts of Congress, entitled "An Act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the Act of Congress, entitled "An Act in addition to an Act entitled 'An Act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the Act entitled "An Act to establish the Judicial Courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the testimony of witnesses in case of appeals are required by the rules of court to be taken before a U. S. Commissioner.

I further certify, that a notification of the time and place of taking the said deposition signed by me, was made out and served on the proctor for the libellant and appellee to be present at the taking of the deposition, and to put interrogatories, if he or they might think fit.

I further certify, that on the twenty-eighth day of April, A. D. 1853, I was attended by the counsel for the respective parties, and by the witnesses, who were of sound mind and lawful age, and the witnesses were by me carefully examined and cautioned, and sworn to testify the whole truth, and the depositions were by me reduced to writing in the presence of the witness, and he subscribed the same in my presence. I have retained the said depositions in my possession for the purpose of filing the same with my own hand to the court for which the same were taken.

I further certify, that I am not of counsel or attorney for either of the parties in said deposition and caption named, or in any way interested in the event of the said cause named in the caption.

In testimony whereof, I have hereunto set my hand and seal, this 28th day of April, in the year of our Lord one thousand eight hundred and fifty-three, and of the Independence of the United States the seventy-eighth.

JOHN W. NELSON,
U. S. Commissioner Circuit Court of the U. S. for the Southern District of New York.

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered, that on this 8th day of September, in the year of our Lord one thousand eight hundred and fifty-three, I, John

M. Nelson, a commissioner duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit, under and by virtue of the Acts of Congress, entitled "An Act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States," passed February 20, 1812, and the Act of Congress, entitled "An Act in addition to an Act entitled, 'An Act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States,'" passed March 1, 1817, and the Act entitled "An Act to establish the Judicial Courts of the United States," passed September 24, 1789, did call and cause to be and personally appear before me, at my office at the new City Hall, in the city of New York, in the said Southern District of New York, in the State aforesaid, John Brooks, Jr., to testify and the truth to say on the part and behalf of the appellant in a certain suit or matters of controversy, now depending and undetermined in the Circuit Court of the United States for the Southern District of New York, wherein The Steamboat Niagara, the East River Association, claimants and appellants, and John Van Pelt, appellee. And the said John Brooks, Jr., being about the age of years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said John Brooks, Jr., and he did thereupon depose, testify, and say as follows, viz:—

Q. Were you master of the steamboat Niagara when a collision took place between her and the steamboat Cleopatra during December, 1847?

A. I was.

Q. How long had you been engaged in navigating the East River at that time?

A. I commenced with my father, in 1810. In the fall of 1812, I took charge of a little sloop, and run her through the war, and at the close of the war I took charge of one of the large packets. In October, 1824, I took charge of a steamboat, and have been at it ever since; I run one year to Albany, and one year to New Brunswick.

Q. What was your route in 1847?

A. Running from here to Bridgeport and back.

Q. What boat left the city with you?

A. The Traveller; we left at the same hour; she was bound to New Haven; I forget whether our hour for starting was six or half-past six in the morning; there was that morning no strife as to speed between my vessel and the Traveller, nor had there been; it was personally understood between me and the captain of the Traveller, that there was to be no strife as to speed; the understanding was, that we should take the lead, and that the Traveller should not pass us in no case, unless some accidental delay. The Traveller took the lead that morning, as we were delayed by waiting for

the mails; we carried the mails; when we went out into the stream I saw the Traveller coming up on the Brooklyn side; the Traveller had started from Peck Slip; she had run across to the Brooklyn shore and straightened up, and if I had gone on we should have come foul of each other, and I signalled the Traveller to go ahead, and she did so; the Traveller had stopped her engine when she saw me, to let me go ahead; the understanding was that whichever boat took the lead, was to keep it, and the other was not to attempt to overtake her; the Traveller then went ahead up on the New York side, close into the docks, along by the Walnut Street ferry, we following in her wake. The tide at the time was ebb-tide in full strength; the Traveller turned the Hook close to the dock; about a hundred feet from it; we turned the Hook a little inside of the Traveller, just inside the wake of her larboard wheel current; there was a ship lay at Corlies Street, her head to the eastward; we starboarded our helm, and straightened up and headed just inside of the Traveller, on the inside of her larboard wheel current, straightening our helm on meeting; we rounded the Hook about our width closer than the Traveller; we rounded closer because the Traveller was farther out.

Q. After you had rounded the point of the Hook, and straightened up in the wake of the Traveller's larboard wheel, and your helm righted as you say, where then was the Cleopatra?

A. She was to the northward and eastward of the Traveller, coming down just abreast of the Stores, above Rivington Street; Champlin's Stores; the Traveller at this time was not to exceed four or five lengths ahead of the Niagara; the Cleopatra came down passing on the outside of the Traveller, about a hundred or a hundred and fifty feet from her; I did not notice that the Traveller sheered in shore, while the Cleopatra was in sight; just before the Cleopatra came down to the Traveller she canted a little out and passed her on the outside; when she came past I had my eye on them, and the first I saw she hove her wheel over to cross our bow under the stern of the Traveller, to go inside of us; if the Cleopatra had kept on her course as when passing the Traveller, she would have cleared us from one hundred or a hundred and fifty feet to the eastward, the same as she had the Traveller; up to the moment of her heaving her wheel over, my expectations were that she would pass the Niagara in the same way as she had passed the Traveller; the navigation of the Cleopatra was fearful and unjustifiable.

Q. Why was it fearful and unjustifiable?

Objected to.

A. It was impossible for it to be done, without either going foul of the wharf, or foul of us.

Q. What prevented her going stern into the wharf?

A. Coming down broad side on to us, she struck us, and that had the effect of swinging her bows clear of the dock.

Q. After seeing her wheel hove over, what was said and done by you on board of the Niagara?

Objected to.

A. I said to the pilot that they were heaving their wheel hard over to cross our bow and go inside of us; he replied it is not possible; I rang the slow bell, and three of us at the wheel hove it hard over to port; this sheared the Niagara to the eastward; it was the only course to be pursued under the circumstances; if we had not done that, we should have gone through her; this brought us in collision side and side, the Cleopatra sweeping down with the tide, her bow coming from the true tide into the eddy; her guards were very close to the water when she struck, from the suddenness of the sheer, and with striking the eddy; that heeled her down, the larboard guard close to the water; I should think her being down so low was an additional cause of the damage done to her.

Q. What, according to the custom and usage of the river, was the proper course of navigation for the Cleopatra, the tide being as it was?

A. She should have continued down the river, as she passed the Traveller, in the true tide, on her course.

Q. And what, according to the same usage, was the proper navigation of the Niagara and Traveller going up?

A. For them to have kept near the docks in the eddy, as the custom is, and always has been.

Q. Did the Niagara during that morning, at any time head for the Wallabout?

A. No, sir.

Q. When, if at any time, did her stern point in the direction of the Wallabout?

A. When we turned the point of the Hook, and headed up after the Traveller, the Wallabout was in a direction off our starboard quarter.

Q. Is the movement of turning the point of the Hook by starboarding the helm, spoken of as swinging around?

A. We call it heading up; it is the same thing as swinging around.

Q. Is it good or bad navigation to cross a vessel's bow, in order to take the right side of her, unless at a safe distance, and describe what you consider to be a safe distance?

A. It is not, and a safe distance I should certainly consider not less than a quarter of a mile.

Q. Was the engineer of the Cleopatra slowed or stopped before the collision took place?

A. I could not speak of whether it was slowed, but it was not stopped; as her wheel met ours, it was still in motion; that is as her wheel went past above house, the moment before they came together.

Q. Why did you not ring to stop as well as slow, at the time?

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A. We should have in a great measure lost the government of the boat by stopping, and could not have got her head outside of the Cleopatra; Captain Van Pelt was not on board of the Cleopatra; the custom as far as I know, and always has been, both on coming into and leaving the city, is for the Captain to go into the wheel-house, and direct the navigation.

Q. Had you ever any conversation with Captain Van Pelt on the subject of this collision; if so, how long after?

A. I had; it was several months after.

Q. What was said?

A. He said he did not think the collision would have taken place if he had been on board; that was all; I inferred that he meant that he would have kept in his course outside.

Inference objected.

Q. What distance had the Niagara run after having straightened up in the wake of the Traveller, before the wheel of the Cleopatra was hove over?

A. I should think five or six lengths.

Q. What do you know of a law respecting the navigation of vessels in the East River, passed since the collision?

Objected to.

A. The notice that I saw of it in the papers at the time; I was not in the legislature.

Q. Do you know of any facts in reference to the navigation of the East River, as leading to the law in question?

Objected to.

A. I heard from persons engaged in navigation, that the large boats coming out of the North River into the East, on an ebb-tide, keeping close to the wharves, and near the walls, caused so much commotion among the canal boats and smaller craft in the lower part of the city, as to part their fasts; it was suggested to me, that that was the reason of the law, to obviate that difficulty; the Empire and Bay State, I have heard, drew 7 or 8 feet; the Niagara drew 5 feet; and the Cleopatra five and a half or six feet.

Q. What are the advantages in navigating up in the eddies upon an ebb-tide?

A. There are two; one is, you go up with a slacker tide, and the other is, you have a freer navigation.

JOHN BROOKS, JR.

Sworn and subscribed before me Sept. 8th, 1853.

JOHN W. NELSON,
U. S. Comm'r.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John W. Nelson, a commissioner duly appointed by the Circuit Court of the United States for the Southern District of New

York, in the Second Circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress, entitled "An act, in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, that the testimony of witnesses in case of appeals are required by the rules of court to be taken before a United States Commissioner.

I further certify that a notification of the time and place of taking the said deposition signed by me, was made out and served on the proctor for appellees, to be present at the taking of the deposition, and to put interrogatories, if he or they might think fit.

I further certify, that on the eighth day of September, A. D. 1853, I was attended by the counsel for both parties and by the witness, who was of sound mind and lawful age, and the witness was by me carefully examined and cautioned, and sworn to testify the whole truth, and the deposition was by me reduced to writing, in the presence of the witness, and he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of filing the same with my own hand to the court for which the same was taken.

I further certify, that I am not of counsel or attorney for either of the parties in said deposition and caption named, or in any way interested in the event of the said cause named in the caption.

In testimony whereof, I have hereunto set my hand and seal, this eighth day of September, in the year of our Lord one thousand eight hundred and fifty-three, and of the Independence of the United States the seventy-eighth.

J. W. NELSON,
U. S. Commissioner Circuit Court of the U. S.
for the Southern District of New York.

At a stated term of the Circuit Court of the United States for the Southern District of New York, held at the City Hall, in the City of New York, on Wednesday, the 21st day of September, one thousand eight hundred and fifty-three—

Present, the Honorable Samuel Nelson, Circuit Judge—

The Steamboat NIAGARA, her tackle, apparel, &c.,
The East River Association, claimants and appellants,
vs.
JOHN VAN PELT, appellee.

This cause having been heard on the appeal from the decree of the District Court thereon, on the Apostles, and additional proofs, and argued by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed that the said decree of said District Court appealed from be, and the same is hereby in all respects affirmed, and that the libellant and appellee recover the amount decreed by said District Court, together with the costs in this court to be taxed.

S. NELSON.

The Steamboat NIAGARA, her tackle, &c.,
East River Association, claimants and appellants,
vs.
JOHN VAN PELT, resp't and appellee.

Dr. Decree.

Filed Sept. 21, 1853.

CIRCUIT COURT OF THE UNITED STATES OF AMERICA
for the Southern District of New York, in the Second Circuit.

The Steamboat NIAGARA, her tackle, &c.,
The East River Steamboat Association, claimants and appellants,
vs.
JOHN VAN PELT, master of the Steamboat CLEOPATRA, and the Norwich and Worcester Railroad Company, owners, &c., libellants and respondents.

Know all men by these presents, that we, George L. Schuyler and Alexander Hamilton, Jr., both of the Southern District of New York, are held and firmly bound unto the above named libellants and respondents in the sum of seven thousand dollars to be paid to the said libellants and respondents; for the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and several, firmly by these presents.

Sealed with our seals, and dated the sixth day of October, in the year of our Lord one thousand eight hundred and fifty-three.

Whereas, the above named claimants and appellants have prose-

cuted an appeal to the Supreme Court of the United States, at the City of Washington, in the District of Columbia, to reverse the decree rendered in the above entitled suit by the Circuit Court of the United States for the Southern District of New York.

Now, therefore, the condition of this obligation is such, that if the above named appellants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

GEORGE L. SCHUYLER, [L. S.]
ALEX. HAMILTON, JR. [L. S.]

Sealed and delivered, subscribed, taken and acknowledged before me this sixth day of October, A. D. 1853.

CHARLES ELIOT SCOVILLE.
U. S. Com.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

George L. Schuyler and Alexander Hamilton, Jr., being duly sworn, depose and say, and each for himself saith, that he is worth the sum of seven thousand dollars over and above all his just debts and liabilities.

GEORGE L. SCHUYLER,
ALEX. HAMILTON, JR.

Sworn to before me the 6th day of October, 1853.

CHARLES ELIOT SCOVILLE,
U. S. Com.

U. S. CIRCUIT COURT.

The Steamboat NIAGARA, &c., The East River Steamboat Association, &c., claimants and appellants,
vs.
JOHN VAN PELT, &c., and others, libellants and respondents.

Bond for costs and damages, to stay pro. on appeal.

ALEX. HAMILTON, JR.
Proctor for Appellants.

Oct. 6, 1853. Approved.

S. NELSON.

Filed Oct. 6, 1853.

1964.

SUPREME COURT OF THE UNITED STATES:

The Steamboat NIAGARA, her tackle, &c., The East River Steamboat Association, claimants and appellants,
vs.
JOHN VAN PELT, Master of the Steamboat Cleopatra, and the Norwich & Worcester Railroad Company, owners, &c., libellants and respondents.

The Appeal of the East River Steamboat Association, the above named claimants and appellants, respectfully showeth: That on the 29th day of March, 1848, the above named John Van Pelt filed his libel in the District Court of the United States for the Southern District of New York, against the steamboat Niagara, her tackle, apparel, &c., in a cause civil and maritime, for the recovery of damages alleged to have been sustained by him to the steamboat Cleopatra, by collision with the said steamboat Niagara on the East River, in the State of New York, and that the said Steamboat Niagara was arrested upon process issued upon said libel, and was discharged on your petitioners filing their claim and entering into stipulations; and your petitioners thereupon filed their answer to said libel, and the said libellants replied thereto, and such proceedings were had in the said cause that on the 4th day of January, 1853, a final decree was made and pronounced therein by the said District Court, wherein it was in substance adjudged that the said libellant recover against the steamboat Niagara, her tackle, &c., the sum of one thousand one hundred and ninety-six $\frac{71}{100}$ dollars, together with costs.

And that after such final decree, your petitioners duly appealed therefrom to the Circuit Court of the United States for the Southern District of New York, and the said cause was removed thereby into the said Circuit Court and there tried anew, and such proceedings were had in the said Circuit Court that afterwards, on the twenty-first day of September, 1853, the said Circuit Court made a final decree in the said cause, whereby it was declared that the said decree of the District Court be in all things affirmed, with costs, and that the said appellees have execution, and that the stipulators cause their stipulations to be fulfilled; which said decree of the said Circuit Court is, as these appellants are advised, erroneous, and ought to be reversed.

Wherefore, these appellants appeal from the whole of said decree of said Circuit Court, to the Supreme Court of the United States, and respectfully pray that the said decree of the said Circuit Court, and the libel, answer, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the

United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the Circuit Court, and every part thereof, may be reversed and a decree made dismissing said libel, with costs, or such other decree as to the said Supreme Court shall seem just.

Dated New York, September 26th, 1853.

ALEX'R HAMILTON, JR.,
Proctor for Claimants and Appellants.

SUPREME COURT OF THE UNITED STATES:

JOHN VAN PELT, appellee,
vs.
The Steamboat NIAGARA, her tackle, &c.,
The East River Association, appellants.

The answer of the above respondent to the petition of appeal of the appellants:—

This respondent, not confessing or acknowledging all or any of the matters and things to be true, as in and by the said petition of appeal are contained and set forth, for answer thereunto says: That he believes it to be true that such decree as is complained of by the appellants and made by the Circuit Court of the United States for the Southern District of New York, as in the said petition of appeal is set forth, but as to the date, substance, and contents thereof, these respondents humbly crave leave to refer thereto, when the same shall be produced.

And these respondents are advised and believe, that the said decree is agreeable to justice and equity; and they therefore pray that the same may be affirmed, and that the said petition of appeal may be dismissed by this honorable court, with costs to be adjudged to these respondents.

(Signed) JOHN VAN PELT.

OSCAR W. STURTEVANT,
Proctor.

LUTHER R. MARSH,
Advocate.

92. Supreme Court of the United States. The Steamboat Niagara, her tackle, &c., The East River Steamboat Association, claimants and appellants, *vs.* John Van Pelt, libellant and respondent. Petition of Appeal, Oct. 6, 1853. Allowed—S. Nelson. Filed Oct. 6, 1853.

A. HAMILTON, JR.,
Proctor for Appellants.

1985.

By the Honorable Samuel Nelson, one of the Judges of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit—To John Van Pelt, master of the steamboat Cleopatra, and the Norwich & Worcester Railroad Company, owners, &c.:—

Whereas, the East River Steamboat Association lately issued out of the Supreme Court of the United States a petition of appeal directed to the Judge of the Circuit Court of the United States for the Southern District of New York, stating, that in the record and proceedings, as also in the rendition of the judgment of a plea in the said court before the judge thereof, between The Steamboat Niagara, her tackle, &c., The East River Steamboat Association, claimants and appellants, and John Van Pelt, master of the steamboat Cleopatra, and the Norwich & Worcester Railroad Company, owners, &c., libellants and respondents, a manifest error hath happened, to the great damage of the said appellants.

And whereas, for the correction of that error in due manner, the said petition of appeal has been issued returnable at the next stated Supreme Court of the United States, held at the capitol, at the City of Washington, on the first Monday of December next; you are therefore hereby cited to appear before the said Supreme Court at the City of Washington, on the said first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the Southern District of New York, in the Second Circuit, the sixth day of October, in the year of our Lord one thousand eight hundred and fifty-three, and of the Independence of the United States the seventy-eighth.

S. NELSON.

92. Supreme Court. The Steamboat Niagara, her tackle, &c., The East River Steamboat Association, claimants and appellants, *vs.* John Van Pelt, libellant and respondent. Citation.

A. HAMILTON, Jr.,
Proctor for Appellants.

I hereby admit service of a copy of the within citation, and also a copy of the petition of appeal, filed in this cause.

October 6, 1853.

OSCAR W. STURTEVANT,
Attorney for Libellants.

Filed Oct. 6, 1853.